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LEGISLATIVE HISTORY
Public Law 91-350
S. 980

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INDEX AND SUMMARY OF S. 980

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June 24, 1969	Senate committee reported with amendments S. 980 S. Report 91-268. Print of bill and report.
June 30, 1969	Senate passed S. 980 as reported.
July 1, 1969	S. 980 was referred to House Judiciary Committee. Print of bill as referred.
Nov. 4, 1969	Subcommittee approved S. 980 for full committee consideration.
Feb. 19, 1970	House subcommittee again approved S. 980 for full committee consideration.
Mar. 23, 1970	House Judiciary committee reported S. 980 with amendments. H. Report 91-933. Print of bill and report.
Apr. 7, 1970	House passed S. 980 under suspension of the Rules.
July 14, 1970	Senate agreed to House Amendments of S. 980
July 23, 1970	Approved: P.L. 91-350

91ST CONGRESS
1ST SESSION

S. 980

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 1969

Mr. TYDINGS introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

FEBRUARY 7, 1969

A BILL

To provide courts of the United States with jurisdiction over
contract claims against nonappropriated fund activities of
the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 1346(a) (2) of title 28, United States
4 Code, is amended by adding at the end thereof the following
5 new sentence: "For the purpose of this paragraph, an ex-
6 press or implied contract with a nonappropriated fund activ-
7 ity of or under the United States or a department or agency
8 of the United States shall be considered an express or implied
9 contract with the United States."

10 (b) The first full paragraph of section 1491 of title 28,

1 United States Code, is amended by adding at the end thereof
2 the following new sentence: "For the purpose of this para-
3 graph, an express or implied contract with a nonappropriated
4 fund activity of or under the United States or a department
5 or agency of the United States shall be considered an express
6 or implied contract with the United States."

7 (c) Section 1302 of the Supplemental Appropriation
8 Act, 1957 (70 Stat. 694; 31 U.S.C. 724 (a)), is amended
9 by adding immediately before the period at the end thereof
10 the following new proviso: "*Provided further*, That any
11 judgment or compromise settlement against the United
12 States arising out of an express or implied contract entered
13 into by a nonappropriated fund activity of or under the
14 United States or a department or agency of the United
15 States, shall be paid in accordance with this section and sec-
16 tions 2414, 2517 and 2518 of title 28, United States Code,
17 and such activity shall reimburse the United States for a
18 judgment or compromise settlement paid by the United
19 States to the extent the Comptroller General of the United
20 States determines that a reimbursement may be made with-
21 out unduly jeopardizing the operation of such activity."

22 SEC. 2. (a) The provisions of this Act shall also apply
23 to claims and civil actions initiated or pending on or after
24 the date of enactment of this Act if the claim or civil action
25 is based upon a transaction, omission, or breach that occurred

1 not more than six years prior to the date of enactment of
2 this Act.

3 (b) The provisions of subsection (a) of this section
4 shall apply notwithstanding a determination or judgment
5 made prior to the date of enactment of this Act that the
6 United States district courts or the United States Court of
7 Claims did not have jurisdiction to entertain a suit on an ex-
8 press or implied contract with a nonappropriated fund ac-
9 tivity of or under the United States or a department or
10 agency of the United States.

11 SEC. 3. The provisions of this Act do not apply to a con-
12 tract entered into by a nonappropriated fund activity of or
13 under the United States or a department or agency of the
14 United States which is subject to suit in its own name
15 under any other provision of law.

A BILL

To provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes.

By Mr. TYDINGS

FEBRUARY 7, 1969

Read twice and referred to the Committee on the
Judiciary

June 24, 1969

7. POLLUTION. A subcommittee of the Interstate and Foreign Commerce Committee approved for full committee action H. R. 12085, to amend the Clean Air Act to extend the program of research relating to fuel and vehicles. p. D546
Rep. Cleveland inserted an editorial, "Thermal Pollution: An Overheated Issue." pp. H5192-3
8. HOT DOGS. Rep. Landrum stated that while he agreed that chicken should be included on the ingredient label of hot dogs it would be confusing to require that the product label or name indicate the presence of chicken. p. H5079
9. TOBACCO. Rep. Carter supported the cigarette labeling and advertising bill as reported by the committee which would preempt the advertising ban proposed by the FCC. p. H5195
10. TAXATION. Rep. Podell stated that the "need for tax reform...is so obvious as to be blatant." pp. H5191-2
Rep. Fascell stated that the "national economy requires retention of the surtax for a reasonable time and the American taxpayer requires more equal treatment from our tax laws." pp. H5157-8
11. CENSUS. Rep. Quillen advocated the number of mandatory questions contained in the census questionnaire be cut down to name, address, age, sex, head of household, race or color, and persons in home at time of census. pp. H5156-7
12. SHOE IMPORTS. Rep. Burke, Mass., expressed concern that small shoe factories are finding competition with foreign imports too much and are going out of business. pp. H5079-80
13. LEGISLATIVE PROGRAM. Rep. Albert announced that consideration of the surcharge extension bill "will be put over until a later date." pp. H5155-6

SENATE

14. FOOD STAMPS. Passed without amendment S. J. Res. 126, to increase from \$340 million to \$750 million the appropriation authorization to operate the food stamp program (pp. S6975, S6977-92, S6995-8). Sen. Ellender said, "Under the program that we hope to adopt early next month, the funds that will be appropriated in accordance with this joint resolution will be spent in accord with a revised food stamp program. In the joint resolution we are not attempting to change the present Food Stamp Act in any manner except to increase the amount of the authorization" (p. S6977).
15. CLAIMS. The Judiciary Committee reported with amendments S. 980, to provide U. S. courts with jurisdiction over contract claims against nonappropriated fund activities of the U. S. (S. Rept. 91-268). p. S7038
16. GREAT PLAINS. The Agriculture and Forestry Committee reported with amendments S. 1790, to continue the Great Plains conservation program (S. Rept. 91-269). p. S7038
17. YOUTH CORPS. The Interior and Insular Affairs Committee with amendments S. 1076, to establish in the Departments of the Interior and Agriculture a Youth Conservation Corps (S. Rept. 91-270). p. S7038

18. RIVER COMPACT. Passed without amendment S. 38, to provide congressional consent to the upper Niobrara River compact between Wyo. and Neb. The upper Niobrara River compact provides a division or apportionment between the States of the available surface water supply of the Upper Niobrara River Basin and to provide for studies of the subsurface water supplies of the basin. pp. S6993-4
19. NASA. The Aeronautical and Space Sciences Committee marked up and voted to report (but did not actually report) in the nature of a substitute bill, H. R. 11271, the 1970 NASA authorization bill. p. D543
20. APPROPRIATIONS. A subcommittee of the Appropriations Committee approved for full committee consideration H. R. 11582, the Treasury and Post Office Departments, the Executive Office of the President, and certain independent agencies appropriation bill, 1970. p. D543
21. TAXATION. Sen. Metcalf opposed taking action to extend the surtax without having a tax reform package to consider right along with it. p. S6995
22. INFLATION. Received from National City, Calif., City council a resolution praying for the enactment of legislation to halt current inflationary trends in the U. S. pp. S7037-8
23. FARM TRAINING. Sen. Yarborough submitted an amendment (for himself and Sen. Cranston jointly) to S. 338, to provide allowance increases to veterans engaged in on-the-job training, farm training, and vocational rehabilitation. The increases would be comparable to those provided in the bill for veterans taking high school and college courses under the GI bill. p. S7049
24. MEXICAN-AMERICANS. Sen. Goldwater praised and expressed his affection for Mexican-American citizens. p. S7053
25. FOREIGN AFFAIRS. Sen. Jackson inserted some articles which he recommended as a realistic and up-to-date interpretation of the "Soviet adversary." pp. S7055-62
Sen. Nelson spoke of his concern over the Nigerian-Biafran controversy and inserted a report by a member of his staff on the subject. pp. S7068-70
26. HUNGER. Sen. McGovern commended the President's selection of Dr. Jean Mayer as Director of the October White House Conference on Food, Nutrition, and Health. pp. S7064-5
Sen. McGovern inserted a "position paper" on hunger which he said demonstrates the inadequacies of the present food stamp program. pp. S7076-8
27. PESTICIDES. Sen. Nelson expressed concern over the use of pesticides chemicals and inserted supporting articles. pp. S7072-5

JURISDICTION OF U.S. COURTS—NONAPPROPRIATED FUND ACTIVITIES

JUNE 24, 1969.—Ordered to be printed

Mr. TYDINGS, from the Committee on the Judiciary, submitted
the following

REPORT

[To accompany S. 980]

The Committee on the Judiciary, to which was referred the bill (S. 980) to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes, having considered the same, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Page 2, line 22; delete the word "The" and insert in lieu thereof the words "In addition to granting jurisdiction over suits brought after the date of enactment of this Act, the"
2. Page 2, line 23; delete the words "initiated" and "or after" and insert in lieu thereof after the word "actions" the words "dismissed before."

PURPOSE OF AMENDMENTS

Amendment No. 1 makes clear that the provisions of the act are intended to have both a prospective application as outlined in the first section and section 3 of this act, and a retroactive application of limited duration as expressed in section 2.

Amendment No. 2 deletes the words "initiated" and "or after" as being superfluous in that, unless otherwise expressed, the provisions of a bill, upon enactment, have an immediate prospective effect. The words "dismissed before" are inserted to assure that the provisions of section 2 are applicable to cover past claims and civil actions whose operative facts occurred not more than 6 years prior to the date of enactment of this act.

NEED FOR LEGISLATION

S. 980 will fill a gap in the Tucker Act's waiver of immunity of the United States to claims based upon contracts with departments or agencies of the Government. The United States is liable in the Court of Claims of the United States and, in appropriate cases, in the district courts of the United States, to suits "upon any express or implied contract with the United States * * *." 28 U.S.C. 1491; 28 U.S.C. 1346(a)(2). The courts have repeatedly held, however, that the Federal Government's liability to suit under these sections only exists with respect to contract obligations to be paid out of appropriated funds. See, e.g., *Kyer v. United States*, 369 F. 2d 714 (Ct. Claims 1966); *Pulaski Cab Co. v. United States*, 157 F. Supp. 955 (Ct. Claims 1968); *Keetz v. United States*, 168 Ct. Claims 205 (1964); *Borden v. United States*, 116 F. Supp. 873 (Ct. Claims 1953).

The injustice and inequity worked by this Tucker Act "loophole" have been recognized often. See, e.g., *Borden v. United States*, 116 F. Supp. 873, 878-880 (Ct. Claims 1953). Indeed, a judge of the Court of Claims has declared "this is a matter which sorely needs congressional correction." See *Kyer v. United States*, 369 F. 2d 714, 719 (Ct. Claims 1966).

Nonappropriated fund activities are at present an anomaly of the law. When States have attempted to tax or regulate their activities these activities have successfully argued that they are immune from taxation and regulation as instrumentalities of the United States. See e.g., *Park Davis v. G.E.M., Inc.*, 201 F. Supp. 207 (D. Md. 1962); *Falls City Brewing Co. v. Reeves*, 40 F. Supp. 35 (W.D. Ky. 1941). When nonappropriated fund activities have been sued outside the United States they have successfully argued that, as instrumentalities of the U.S. Government, they are not liable to suit on contract in foreign courts. See, e.g., *Wuliger v. Headquarters, 7480th Supply Group (Special Activities) Labor Court*, Weisbaden, October 8, 1958, unreported. Courts have held, see, e.g., *United States v. Holcombe*, 277 F. 2d 143 (4th Cir. 1960); *Daniels v. Chanute Air Force Base Exchange*, 127 F. Supp. 920 (E.D. Ill. 1955), and the Justice Department has supported the ruling (letter dated July 13, 1960, from George Cochran Doub, Assistant Attorney General, 243 AF JAG Reporter, 15 (Aug. 1, 1960), that employees of nonappropriated fund activities, when performing their official duties, are employees of the United States and that the United States is liable under the Federal Tort Claims Act for injuries caused by their negligence. The United States has even sued in its own name to enforce contracts entered into by nonappropriated fund activities. See, e.g., *United States v. Howell*, 318 F. 2d 162 (9th Cir. 1963).

Despite this consistent identification of the nonappropriated fund activity with its parent department or agency and the United States, contractors with such activities have found it impossible to get a "day in court" when they allege breach of contract by such activities. Your committee believes that there is no rational reason to continue the immunity from contract suit presently afforded nonappropriated fund activities. The Defense Department, parent of the greatest number of these activities (military post exchanges, ships stores, etc.) has agreed that "no policy grounds [justify] nonappropriated fund instrumentalities in continuing to claim absolute immunity from suits on their

contracts when Congress has waived such immunity in suits on contracts with the Federal Government itself." (See letter dated May 20, 1968, from Thomas H. Nielson, Assistant Secretary of the Air Force, to Hon. James C. Eastland, chairman, Committee on the Judiciary, U.S. Senate, reprinted at the conclusion of this report.) This position is buttressed by the fact that nonappropriated fund activities have become an important part of our national economy. The Armed Forces post exchange system—a prime example of a nonappropriated fund activity—is now the third largest department store chain with annual sales of over \$3.5 billion exceeded only by Sears, Roebuck & Co. and J. C. Penney Co.

LEGISLATIVE HISTORY

On March 14, 1968, Hon. Joseph D. Tydings, a Senator from Maryland, introduced S. 3163, a bill to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States. The bill was referred to the Committee on the Judiciary and to its Subcommittee on Improvements in Judicial Machinery. That subcommittee held hearings on S. 3163 on May 8 and 21, 1968. Witnesses before the subcommittee included: Hon. Hervey G. Machen, U.S. House of Representatives; Aaron Goldman, president, the Macke Corp., Cheverly, Md.; William E. Magee, Esq., Washington, D.C.; Dean Ralph C. Nash, professor of law, the George Washington University School of Law; Hon. Wilson Cowen, chief judge, U.S. Courts of Claims; and Col. Donald A. Williams, Office of the Judge Advocate General, Directorate of Civil Law, Litigation Division, Headquarters, U.S. Air Force. All witnesses heard favored enactment of S. 3163. The Department of the Air Force for the Department of Defense submitted a favorable report (May 20, 1968) on the bill, suggesting a number of technical and one substantive amendment. The Department of Justice submitted a report favoring S. 3163 in principle, but suggesting two amendments. (See letter dated Aug. 14, 1968, from Deputy Attorney General Warren Christopher to Hon. James O. Eastland, chairman, Committee on the Judiciary, U.S. Senate, reprinted at the conclusion of this report.) The National Aeronautics and Space Administration and the Department of Agriculture submitted reports favoring the bill in principle. (See letter dated May 21, 1968, from Robert F. Allnutt, Assistant Administrator for Legislative Affairs, and letter dated Oct. 3, 1968, from Secretary of Agriculture Orville Freeman to Hon. James O. Eastland, chairman, Committee on the Judiciary, U.S. Senate, reprinted at the conclusion of this report.) The House of Delegates of the American Bar Association approved S. 3163 in principle at the association's annual meeting in Philadelphia, August 28, 1968. (See letter dated Feb. 28, 1969, from John P. Tracey, assistant director, to Hon. Joseph D. Tydings, chairman, Subcommittee on Improvements in Judicial Machinery, U.S. Senate, reprinted at the conclusion of this report.)

On February 7, 1969, Senator Tydings introduced S. 980 which included several substantive changes from S. 3163 of the 90th Congress. These changes embodied in S. 980 were made on the basis of testimony received at last year's hearings. The first modification deleted the words "a department, agency, or armed force" contained in subsections (a), (b), and (c) of the first section of S. 3163 of the 90th

Congress, and the words "the United States or a department or agency" were inserted in lieu thereof in subsections (a), (b), and (c) of the first section of S. 980. This change conformed the language of S. 980 to the breadth of the problem to be resolved and deleted the superfluous term "armed force" in S. 3163. Nonappropriated fund activities take on many organizational forms, some of which might not be included in the term "of or under a department, agency or armed force of the United States" as used in S. 3163 of the 90th Congress. However, the term "of or under the United States or a department or agency" in S. 980 brings within the scope of the bill all nonappropriated fund activities of the United States not specifically excepted. The Armed Forces of the United States, are, of course, departments or subdepartments of the United States and thus are included in the term "department or agency" as used in S. 980.

The second difference, reflected in section 2 of S. 980, clarified the limitation upon the retroactive effect of this legislation, making it the same as the general statute of limitations upon contract claims against the United States as stated in 28 U.S.C. § 2501(a), and prohibited the assertion of the defense of *res judicata* or other similar pleas to jurisdiction. The subcommittee hearings clearly demonstrated that there exists at least a small number of contractors with nonappropriated fund activities for whom there was no forum to hear their claims of contract breach. Some of these contractors bore the cost of litigation only to find access to the court barred by the judiciary's interpretation of the Tucker Act. Justice and equity dictate that the courts should be made available to those individuals whose claims first brought the immunity anomaly to light, and that, as to these actions, the Government should be precluded from raising the defense of their previous determination. Those determinations, it should be noted, were based solely on jurisdictional and not substantive grounds.

Another change in S. 980 was the addition of a new section 3 to the measure. Its language was intended to limit the application of the bill to contracts of nonappropriated fund activities which have not already shed their immunity to suit under other provisions of law. Examples, for instance, of nonappropriated fund activities already subject to suit in their names include the American Red Cross (36 U.S.C. § 2) and the Tennessee Valley Authority (16 U.S.C. § 831(c)).

The subcommittee held a hearing on March 4, 1969, in order to hear testimony on these changes in S. 980. The two witnesses heard were: Hon. Louis Spector, Commissioner of the U.S. Court of Claims; and Mr. Loren K. Olson, an attorney in Washington, D.C. Commissioner Spector, who was chairman of the section of public contract law of the American Bar Association when it considered an endorsed S. 3163 at the association's convention last August, testified that the ABA's endorsement of S. 3163 would equally apply to S. 980. Similarly, Mr. Olson concurred with the several modifications reflected in S. 980.

STATEMENT

Your committee believes that S. 980, as amended, is consistent with the public policy of the United States clearly expressed in the Tucker Act, that the sovereign immunity of the United States to contract suit should be waived when complaints are filed in an appropriate forum. S. 980 will provide contractors with nonappropriated fund activities

of or under the United States or departments or agencies of the United States with the same contract remedies available to those who contract directly with those departments or agencies in furtherance of activities supported by appropriated funds. In so doing, S. 980 will erase an anachronistic and baseless distinction between suits on contracts of the United States to be paid out of appropriated funds and those to be paid out of nonappropriated funds. Your committee believes that equity, sound public policy, and efficient operation of nonappropriated fund activities demand favorable action upon S. 980.

SECTIONAL ANALYSIS

Subsection (a) of the first section of S. 980 amends paragraph (2) of section 1346(a) of title 28, United States Code, to require that an express or implied contract with a nonappropriated fund activity of the United States or a department or agency of the United States be considered an "express or implied contract with the United States" within the meaning of that term as used in that paragraph. The effect of this subsection is to grant to the U.S. district courts, concurrent with the Court of Claims, original jurisdiction of any civil action, not exceeding \$10,000 in amount, founded upon an express or implied contract with a nonappropriated fund activity of the United States or a department or agency of the United States.

Subsection (b) of the first section amends section 1491 of title 28, United States Code, to require that an express or implied contract with a nonappropriated fund activity of the United States or a department or agency of the United States be considered an "express or implied contract with the United States" within the meaning of that term as used in that paragraph. The effect of this subsection is to grant to the Court of Claims jurisdiction to render judgment upon any claim founded upon any express or implied contract with a nonappropriated fund activity of the United States or a department or agency of the United States.

Subsection (c) of the first section amends section 1302 of the Supplemental Appropriation Act, 1957 (70 Stat. 694; 31 U.S.C. 724a) to require that any judgment or compromise settlement against the United States arising out of the express or implied contracts of a nonappropriated fund activity of or under the United States or a department or agency of the United States be paid in accordance with that section and sections 2414, 2517, and 2518 of title 28, United States Code. Subsection (c) also requires that the United States be reimbursed by the appropriate nonappropriated fund activity for any judgment or compromise settlement so paid by the United States to the extent that the Comptroller General deems that such reimbursement may be made without unduly jeopardizing the operation of the nonappropriated fund activity.

It has been suggested that the bill be amended to define precisely the term "nonappropriated fund activity" used in this and succeeding sections of the act. The Department of Justice, for instance, has suggested that the statute be amended to apply only to nonappropriated fund activities of the United States or departments or agencies thereof " * * * subject to the supervision and control thereof." The Department contends that such language would avoid the extension of Tucker Act liability "to the procurement activities of groups not subject to control by the responsible officials of the Government."

Your committee rejects this suggestion for two reasons. (1) The bill clearly identifies the activities involved: "nonappropriated fund activities of or under the United States or a department or agency of the United States." In each case of the cases cited in this report the outcome has depended upon a finding that the defendant entity did indeed constitute a nonappropriated fund activity of the Government. The courts, in all of these cases, have found it easy to determine whether an activity is a nonappropriated fund activity of the United States. Furthermore, your committee, at its hearing on S. 980, heard testimony that a legislative definition of a nonappropriated fund activity was clearly not necessary. (2) Your committee is also of the opinion that any attempt to limit the courts in their determination of what is and what is not a "nonappropriated fund activity of or under the United States or a department or agency of the United States" would ultimately serve to create additional loopholes through which clever defendants may ultimately retreat into the anachronism of governmental immunity that the bill seeks to eradicate. Contracts for the benefit of the United States, and entered into by the Government agencies, by whatever name denominated, ought to be enforceable in the courts of the United States. The activities intended to be included within this section are only those that would be otherwise protected from suit by the doctrine of sovereign immunity.

Subsection (a) of section 2 of S. 980, as amended, is intended to give the bill a limited retroactive effect in addition to the prospective nature of the other sections of the act. Your committee rejected the suggestion that the bill be given no retroactive effect. The bill, as amended and reported, provides limited retroactive effect. This bill provides a forum for those claims and suits pending on the date of enactment of this act based upon a breach which occurred not more than 6 years prior to enactment. Further, because your committee desires to make the courts available to those contractors whose suits first brought to light the present anomaly and injustice of the law, the second amendment to the bill provides the forum for those suits dismissed before enactment of the act but which were based upon a breach occurring not more than 6 years prior to enactment. As to this limited class of cases, there has been no determination on the merits of the claims presented because the plaintiffs were denied access to a judicial forum. Justice dictates that once the bar to the courthouse door is withdrawn those who brought that jurisdictional bar to light should have their day in court. These plaintiffs will be allowed to refile their suits and have a determination of the merits of their claims.

The 6-year retroactive application of the bill is identical to the general statute of limitations upon contract claims against the United States (28 U.S.C. sec. 2501(a)). This limited retroactivity avoids opening the courts to all prior claims arising out of nonappropriated fund activity contracts, by precluding those claims which would be barred by normal operation of the statute of limitation.

Subsection (b) of section 2 expresses your committee's opinion that the defense of *res judicata* and other similar pleas to jurisdiction should be unavailable to the Government when those prior claims or civil action which come under the provisions of subsection (a) of section 2 are tested again in the courts of the United States under the provisions of the legislation.

Section 3 of S. 980, restricts the application of the bill to contracts of nonappropriated fund activities not already subject to suit in their own names under any other provisions of law.

In view of the foregoing the committee believes this legislation to be meritorious and recommends that S. 980, as amended, be considered favorably.

Attached hereto and made a part hereof are the reports of the Department of Defense, dated May 20, 1968; the Department of Justice, dated August 14, 1968; the Department of Agriculture, dated October 3, 1968; and the National Aeronautics and Space Administration, dated May 21, 1968. Also attached hereto and made a part thereof is a letter from the Washington office, American Bar Association, advising of action of the association's house of delegates.

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
Washington, May 20, 1968.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate.

DEAR MR. CHAIRMAN: This refers to your request to the Secretary of Defense for the views of the Department of Defense with respect to S. 3163, 90th Congress, a bill to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States. The Secretary of Defense has delegated to the Department of the Air Force the responsibility for expressing the views of the Department of Defense.

The purpose of S. 3163 is to amend title 28, United States Code, to confer jurisdiction on, and authorize suits to be brought against the United States in the U.S. district courts and the Court of Claims on causes of action arising out of contracts entered into by nonappropriated fund activities of or under a department, agency, or armed force of the United States. It thus would afford a remedy to sue and recover on a contract of a nonappropriated fund instrumentality of the United States where no such remedy now exists. The bill would also amend the Supplemental Appropriation Act, 1957 (31 U.S.C. 724a) to specifically provide for the payment of judgments and compromise settlements against the United States arising out of a contract entered into by a nonappropriated fund activity, and to specify that the United States would be reimbursed from the activity to the extent the Comptroller General determines such reimbursement would not jeopardize the operations of the activity. The bill would apply to civil actions initiated or pending on or after the date of its enactment, without regard to the date on which the matters giving rise to civil actions occurred, but would not apply to claims barred by the statute of limitations on the date of enactment.

Since nonappropriated fund activities are carried on under many departments and agencies of the United States, the effect of the bill would be Government-wide in its implications and effects. These activities, which cannot be supported by appropriated funds, must be financed by certain revenue-producing activities of the department or agency concerned. With respect to the Department of Defense, nonappropriated fund activities are organized to provide for certain welfare, comfort, and recreational needs of military personnel, and

civilian personnel in proper cases, which cannot be provided for by appropriated funds. The legal status of a nonappropriated fund activity is that of a Federal instrumentality. This status confers on the instrumentality the same privileges and immunities that belong to the Federal Government, one of the more important of which is freedom from suit unless consent thereto has been granted by Congress.

At the present time, neither the nonappropriated fund instrumentality nor the United States is amendable to suit in the U.S. districts courts or the Court of Claims on causes of action arising from contracts of such activities (Court of Claims, *Borden v. United States*, 116 F. Supp. 873 (Ct. Cl. 1953); *Pulaski Cab Company v. United States*, 157 F. Supp. 955 (Ct. Cl. 1958); Federal district court, *Edelstein v. South Post Officers Club*, 118 F. Supp. 40 (E.D. Va. 1951)). A nonappropriated fund instrumentality may not be sued because it has a privileged status as an integral part of a department or agency of the United States and is not subject to suit unless consent thereto has been granted by Congress. The United States cannot be sued because obligations arising out of contracts between the nonappropriated fund instrumentalities and private individuals are not liabilities of the United States. S. 3163 would correct this anomalous situation which stems from lack of jurisdiction of courts to try actions arising from contracts of nonappropriated fund instrumentalities.

In the *Borden* case, cited above, the Court of Claims suggested that Congress be asked to legislate on the subject and make either the nonappropriated fund instrumentality or the United States subject to suit. The alternative adopted by S. 3163 is to make the United States subject to suit on a contract entered into by a nonappropriated fund instrumentality. This department believes that this is the preferable approach, since it is consistent with the concept that the nonappropriated fund instrumentality is conducting a governmental function.

There appear to be no policy grounds justifying nonappropriated fund instrumentalities in continuing to claim absolute immunity from suits on their contracts when Congress has waived such immunity in suits on contracts of the Federal Government itself.

Although the Department of the Air Force, on behalf of the Department of Defense, has no objection to the basic purpose of S. 3163, the bill has certain objectionable features.

For example, section 2 would make the provisions of the bill applicable to civil actions initiated or pending on or after the date of the bill's enactment without regard to the date on which the matters giving rise to the civil actions occurred. This would permit suits to be brought against the United States even with respect to contractual claims that had been otherwise disposed of prior to the enactment of S. 3163. Presumably, if the statute of limitations did not act as a bar, it would permit reinstitution of claims such as those disposed of in the *Pulaski* case, cited above. It is believed that the bill should not authorize the revival of old and stale causes of action. Accordingly, it is suggested that this provision be amended to read: "This Act applies to contractual claims arising on or after the effective date of this Act."

There may be some question as to the nature and scope of the nonappropriated fund activities which would be covered by the proposed legislation. In the Department of Defense, the term "non-

appropriated fund instrumentalities of the United States" means an instrumentality established, operated, and controlled under regulations prescribed by the head of the military department concerned to perform a function beneficial to the United States, or the military or civilian personnel of the department, the funds of which are derived from sources other than appropriations by Congress. This standard can be applied on a Government-wide basis. It is, therefore, suggested that on lines 6 to 8, page 1 and lines 4 and 5, page 2 of the bill, the words "activity of or under a department, agency, or armed force of the United States" be deleted and "instrumentality of the United States, established and operated under regulations prescribed by the head of the department or agency concerned" be inserted in place thereof.

Where the right to sue and recover exists under present law (1) against the instrumentality in its own name, as is the case with Federal credit unions (12 U.S.C. 1757(2)); (2) against the agency, as is the case with respect to the Tennessee Valley Authority (16 U.S.C. 831c(b)); or (3) against the United States, as is apparently the case with respect to the Veterans' Canteen Service, the proposed legislation obviously is not needed. A new sentence to make the proposal inapplicable in such cases should be added to section 2, substantially as follows: "This Act does not apply to contractual claims against non-appropriated fund instrumentalities of the United States that are subject to suit under any other provision of law."

It seems obvious that employees' associations organized by employees for their own benefit and chartered pursuant to the local laws of a State or the District of Columbia, as is the case with respect to the Veterans' Administration Central Office Employees' Association, are not nonappropriated fund instrumentalities of the United States and would not be subject to the provisions of S. 3163.

We believe that the determination as to the extent reimbursement can be made by a nonappropriated fund activity to the United States without unduly jeopardizing its operations should be made by the head of the department or agency having knowledge of the status of the fund involved, rather than by the Comptroller General.

S. 3163 does not specifically provide that the provisions of the so-called Wunderlich Act (act of May 11, 1954, ch. 199, 41 U.S.C. 321, 322) are applicable to contracts of nonappropriated fund instrumentalities of the United States with respect to the judicial review of administrative decisions. In order to eliminate any doubt on this point, it is suggested that a new section be inserted in the bill to clarify this point.

As a technical drafting matter, it is recommended for simplicity that the words "department, agency, or armed force" be deleted wherever used and "department or agency" inserted in place thereof. The concept of "armed force" is covered by and included in "department."

While the Department of the Air Force, on behalf of the Department of Defense, agrees in principle with the general purpose of S. 3163, it recommends that it be amended as indicated in order to accomplish better its intended purpose. Accordingly, a substitute draft which includes the above recommended changes is attached.

The enactment of this proposal will cause no increase in the budgetary requirements for the Department of Defense.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

THOMAS H. NIELSEN,
Assistant Secretary of the Air Force.

AUGUST 14, 1968.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 3163, a bill to provide courts of the United States with jurisdiction over contract claims against non-appropriated fund activities of the United States.

The purpose of the bill is to permit the United States to be sued under the Tucker Act (28 U.S.C. 1346(a) and 1491) upon express or implied contracts with a nonappropriated fund activity of or under a department, agency, or armed force of the United States. A judgment or compromise settlement against the United States arising out of an express or implied contract of a nonappropriated fund activity shall be paid out of funds of the United States in accordance with 31 U.S.C. 724(a) and 28 U.S.C. 2414, 2517, and 2518; the United States shall be reimbursed by the activity for any such payment to the extent that the Comptroller General of the United States determines that reimbursement may be made without unduly jeopardizing the operations of the activity.

The bill would apply to claims and civil actions initiated or pending on or after the date of its enactment, without regard to the date on which the matters giving rise to such actions occurred. However, no remedy would be available under the act for any claim barred by the appropriate statute of limitations on the date of enactment of the act.

Under present law, nonappropriated fund activities are deemed instrumentalities of the United States and, in the absence of any statutory waiver, contract suits against the activity are barred by sovereign immunity. Also, the contractor has no remedy against the United States because both the district courts and the Court of Claims have held that the Government's consent to suit under the Tucker Act, 28 U.S.C. 1346, 1491, extends only to claims upon contracts which obligate appropriated funds. Therefore, there is no judicial remedy for persons with contract claims against a nonappropriated fund activity.

The Department of Justice is in accord with the purposes of S. 3163. However, we are unable to support its enactment in the form in which it is presently drafted, and offer the following suggestions for change.

1. Liability of the Government under the Tucker Act should not be extended to the procurement activities of a group not subject to control by the responsible officials of the Government. To avoid the possibility of such an interpretation, we believe that the phrase "of or under

the departments and agencies of the United States" should be modified by adding "and subject to the supervision and control thereof" immediately following it.

2. Section 2 of S. 3163 would make its provisions applicable to claims or suits pending after the date of its enactment regardless of the date when the events which gave rise to the claim arose, although claims barred by the appropriate statute of limitations on the date of enactment of this act are not permitted. Since claimants may seek to rely upon this when claims are barred by *res adjudicata*, we recommend that the language be amended to make explicit the fact that the section does not permit such claims. We believe it would be preferable that the bill apply only to claims upon contracts made after its enactment.

The Department of Justice recommends enactment of this legislation amended as suggested.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

WARREN CHRISTOPHER,
Deputy Attorney General.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., October 3, 1968.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of March 26, 1968, requesting the views of this Department on S. 3163, a bill to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States.

The proposed legislation would amend 28 U.S.C. 1346(a)(2) and 28 U.S.C. 1491 by adding a new sentence which would provide that an express or implied contract with a nonappropriated fund activity of or under a department, agency, or armed force of the United States shall be considered to be a contract entered into by the United States. The payment of a judgment or compromise settlement against the United States arising out of a suit on which a contract shall be paid by the United States which shall be reimbursed by the nonappropriated fund activity to the extent the Comptroller General shall determine that such reimbursement may be made without unduly jeopardizing the operation of the activity.

The purpose of the bill is to make the United States amenable to suit under the Tucker Act (28 U.S.C. 1346(a) and 1491) upon contract claims against nonappropriated fund activities "of or under" Federal agencies or departments.

This Department is in accord with the purpose of the bill. However, we do not favor enactment of the bill as it is presently drafted.

Nonappropriated fund "activities" are generally established by Federal departments and agencies to carry on some activity in support of the main operations of the agency in which they are located. These activities do not use appropriated funds to defray expenses but usually conduct some revenue-producing activity or collect dues and admission fees which support their operations. We believe that the

bill was primarily designed to cover these peripheral military institutions, such as officers' clubs, post exchanges and ships' stores, which are considered by the courts to be instrumentalities of the United States and yet are not supported by appropriated funds. *Standard Oil Co. v. Johnson*, 316 U.S. 481 (1942). However, this Department has a number of nonappropriated fund activities which may be affected by the provisions of the bill.

Nonappropriated fund "activities" conduct many of their functions through contracts with third parties. Claims for breach of contract and other disputes will arise under the contracts. Under the present law, a person who has a contract claim against a nonappropriated fund "activity" has no judicial forum in which to seek redress against the "activity" or the United States. Since nonappropriated fund activities are considered instrumentalities of the United States, the courts have held that the absence of any express statutory waiver of sovereign immunity bars contract suits directly against the "activity" itself. *Edelstein v. South Post Officers Club*, 118 F. Supp. 40 (E.D. Va. 1951); *American Commercial Co. v. U.S. Officers and Noncommissioned Officers Club, ETO*, 187 F. 2d 91 (D.C. Cir. 1951).

The contractor has no remedy by suit against the United States under the Tucker Act because both the district courts and the Court of Claims have held that the Government's consent to suit under that statute extends only to claims upon contracts which obligate appropriated funds and does not include contracts with nonappropriated fund "activities". *Bailey v. United States*, 201 F. Supp. 604 (D. Alaska, 1962); *Bleuer v. United States*, 517 F. Supp. 509 (E.D. S.C., 1950); *Kyer v. United States*, 177 Ct. Cls. 747, 369 F. 2d 714 (1966), *cert. denied*, 387 U.S. 929 (1967).

These rules have left persons who contract with nonappropriated fund "activities" without any judicial forum in which to enforce their rights under the contracts. Since Congress has waived the immunity of the Government from suit by contractors who deal with its departments and agencies, there is no valid reason to exempt nonappropriated fund "activities" from the same liability.

We are, however, concerned that the bill may extend liability to contracts of activities which this Department cannot supervise or control, such as informal associations of employees for recreational purposes. It is our view that the United States should not be liable under the Tucker Act for the activities of a group which is not subject to procurement control by the proper officials of this Department.

There are other statutes administered by this Department (*e.g.*, the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601 *et seq.*; and the Cotton Research and Promotion Act, 7 U.S.C. 2101 *et seq.*) that authorize the carrying out of specified activities by designated agencies of the Secretary of Agriculture but expressly limit the source of funds that may be used to defray the expenses of such activities. Thus, under the Agricultural Marketing Agreement Act of 1937, as amended, the expenses of the agencies appointed to administer marketing order programs (including those for carrying out the Department's responsibilities with respect to the control and disposition of certain surplus pools of regulated commodities, and marketing research and development projects, including paid advertising for specified commodities), are required (7 U.S.C. 608c(6)(I) and 610(b)(2)(ii)) to be paid from proceeds of such pools

or from funds collected pursuant to the applicable marketing order programs by way of handler assessments. Similarly, under the Cotton Research and Promotion Act, the funds to cover expenses for carrying out authorized activities of the Cotton Board are to be derived solely from assessments on producers collected pursuant to the Cotton Research and Promotion Order (7 CFR part 1205) effective thereunder. In this connection, section 2118 of the Cotton Research and Promotion Act provides as follows:

"There is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated such funds as are necessary to carry out the provisions of this Act. The funds so appropriated shall not be available for the payment of the expenses of expenditures of the Cotton Board in administering any provisions of any order issued pursuant to the terms of this Act."

The Department of Agriculture also has extensive inspection and grading programs, administered by the Department, which are financed out of nonappropriated funds obtained from user fees. These are principally effective under the Agricultural Marketing Act of 1946, 7 U.S.C. 1622(h) *et seq.* Under these programs inspection and grading service is provided to eligible persons on the basis of express or implied contracts and such activities presumably would also be covered by the bill. Some such programs are administered on a Federal-State cooperation basis, and the additional question could arise as to whether a contract made between a State inspection agency and an individual to provide inspection or grading under such a Federal-State arrangement would give rise to potential liability against the United States.

While this Department does not object to the purpose of the bill as applied to these programs, attention is directed to these situations because of the potential charges against the Treasury which could arise due to the bill, if enacted.

We believe, however, that the bill should be revised so as to state more clearly the intended coverage of the bill and to avoid latent ambiguity which now appears to be present in the bill.

As the bill is written, it is not clear what is meant by a contract with a nonappropriated fund "activity". As previously stated, post exchanges and the like have been held to be "instrumentalities" of the United States. They are immune from suit because of such status, not because of their "activity". We, therefore, suggest that the key wording describing these contracts be amended to read "* * * an express or implied contract with a department or agency of the United States or an agency thereof; or an armed force of the United States or an instrumentality thereof; with respect to a non-appropriated fund activity thereof * * *."

Further, we believe that the phrase, "except where jurisdiction is otherwise provided for by law," should be inserted as shown below in order to make it clear that no change is intended in any law with respect to agencies of the United States, such as the Commodity Credit Corporation (see 15 U.S.C. 714 *et seq.*) whose operations are financed from funds borrowed from the Treasury and other sources, rather than from appropriated funds, and which, under existing law, may sue and be sued in their own names.

In view of the foregoing, we suggest the following amendments to S. 3163.

1. At page 1, lines 5 to 9 and at page 2, lines 2 to 6 delete "For the purpose of this paragraph, an express or implied contract with a nonappropriated fund activity of or under a department, agency, or armed force of the United States shall be considered an express or implied contract with the United States." and substitute therefor the following "For the purpose of this paragraph, an express or implied contract with a department or agency of the United States or an agency thereof; or an armed force of the United States or an instrumentality thereof; with respect to a nonappropriated fund activity thereof, shall, except where jurisdiction is otherwise provided for by law, be considered an express or implied contract with the United States."

2. At lines 12 to 14, page 2, delete "by a nonappropriated fund activity of or under a department, agency, or armed force of the United States" and substitute therefor "by a department or agency of the United States or an agency thereof; or an armed force of the United States, or an instrumentality thereof; with respect to a nonappropriated fund activity thereof,".

3. At lines 17 and 21 on page 2 delete the word "activity" and substitute therefor "department or agency of the United States or an agency thereof; or armed force of the United States or instrumentality thereof".

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN.

MAY 21, 1968.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your letter of March 26, 1968, in which you request comments from the National Aeronautics and Space Administration on the bill S. 3163, to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States.

The bill would correct an inequity resulting from a series of court decisions holding that neither a nonappropriated fund activity nor the United States may be sued on a nonappropriated fund activity contract, the former because it is not a suable entity, and the latter because the United States is not a party to the contract and has not expressly consented to be obligated by such contracts. The bill would afford members of the public a judicial forum to obtain resolution of claims arising out of their contracts with such activities.

The bill would amend 28 U.S.C. sections 1346(a)(2) and 1491 to provide U.S. district courts and the U.S. Court of Claims with jurisdiction over contract claims involving nonappropriated fund activities of the United States. That would be accomplished by providing that contracts with such activities shall be considered as contracts with

the United States for that purpose. Judgments or compromise settlements arising out of such contracts would be paid from appropriated funds and the United States would be reimbursed by the activity involved to the extent the Comptroller General determines that the reimbursement would not unduly jeopardize the operations of the activity. The bill would include coverage of claims and civil actions initiated or pending on or after the date of enactment of the act, but would exclude claims barred by the appropriate statute of limitations.

If enacted the bill would provide no serious administration problem for NASA. Compared to certain other agencies of the Federal Government, particularly the Department of Defense, NASA's use of unappropriated fund activities is, and has been, nominal. For that reason it hesitates to recommend specific amendments which might have a serious impact on other agencies of the Government. However, it might be desirable for those more seriously concerned to propose a definition of the term "unappropriated fund activity."

There are many semiofficial activities, such as bowling leagues, employee clubs, and baseball teams, operating incidentally to Government agencies and which Congress might not want to include within the bill's operation. In any event, clarification of the term would simplify consideration of the bill and facilitate its administration if it is enacted.

Subject to the foregoing comments, the National Aeronautics and Space Administration perceives no objection to the enactment of S. 3163.

The Bureau of the Budget has advised that, from the standpoint of the administration's program, there is no objection to the submission of this report to the Congress.

Sincerely yours,

ROBERT F. ALLNUTT,
Assistant Administrator for Legislative Affairs.

AMERICAN BAR ASSOCIATION,
Washington, D.C., February 28, 1969.

Senator JOSEPH D. TYDINGS,
*Chairman, Senate Subcommittee on Improvements in Judicial Machinery,
6308 New Senate Office Building, Washington, D.C.*

DEAR SENATOR TYDINGS: In response to the request of Mr. Figinski, counsel to the subcommittee, I am pleased to advise that, at its annual meeting in 1968, the house of delegates of the American Bar Association adopted the following resolution regarding S. 3163, 90th Congress, second session.

"*Resolved*, That the American Bar Association approves in principle the proposed bill to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States."

The above statement is a statement of policy of the American Bar Association.

Sincerely,

JOHN P. TRACEY.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 28, UNITED STATES CODE

Chapter 85—DISTRICT COURTS; JURISDICTION

§ 1346. United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

(6) Any other civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort. *For the purpose of this paragraph, an express or implied contract with a nonappropriated fund activity of or under the United States or a department or agency of the United States shall be considered an express or implied contract with the United States.*

Chapter 91—COURT OF CLAIMS

§ 1491. Claims against United States generally; actions involving Tennessee Valley Authority

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. *For the purpose of this paragraph an express or implied contract with a nonappropriated fund activity of or under the United States or a department or agency of the United States shall be considered an express or implied contract with the United States.*

Section 1302 of the Supplemental Appropriation Act, 1957 (31 U.S.C. § 724a)

§ 1302. There are appropriated, out of any money in the Treasury not otherwise appropriated, and out of the postal revenues, respectively, such sums as may hereafter be necessary for the payment, not otherwise provided for, as certified by the Comptroller General, of final judgments, and awards and compromise settlements (not in excess of \$100,000, or its equivalent in foreign currencies at the time of payment, in any one case) which are payable in accordance

with the terms of sections 2414, 2517, 2672 or 2677 of title 28, United States Code, together with such interest and costs as may be specified in such judgments or otherwise authorized by law: *Provided*, That, whenever a judgment of a district court to which the provisions of section 2411(b) of title 28, United States Code, apply, is payable from this appropriation, interest shall be paid thereon only when such judgment becomes final after review on appeal or petition by the United States, and then only from the date of the filing of the transcript thereof in the General Accounting Office to the date of the mandate of affirmance (except that in cases reviewed by the Supreme Court interest shall not be allowed beyond the term of the Court at which the judgment was affirmed): *Provided further*, That whenever a judgment rendered by the Court of Claims is payable from this appropriation, interest payable thereof in accordance with section 2516(b) of title 28, United States Code, shall be computed from the date of the filing of the transcript thereof in the General Accounting Office: *Provided further*, That any judgment or compromise settlement against the United States arising out of an express or implied contract entered into by a nonappropriated fund activity of or under the United States, or a department or agency of the United States shall be paid in accordance with this section and sections 2414, 2517, and 2518 of title 28, United States Code, and such activity shall reimburse the United States for a judgment or compromise settlement paid by the United States to the extent the Comptroller General of the United States determines that a reimbursement may be made without unduly jeopardizing the operation of such activity.



S. 980

[Report No. 91-268]

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 1969

Mr. TYDINGS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JUNE 24, 1969

Reported by Mr. TYDINGS, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 1346 (a) (2) of title 28, United States
4 Code, is amended by adding at the end thereof the following
5 new sentence: "For the purpose of this paragraph, an ex-
6 press or implied contract with a nonappropriated fund activ-
7 ity of or under the United States or a department or agency
8 of the United States shall be considered an express or implied
9 contract with the United States."

10 (b) The first full paragraph of section 1491 of title 28,

1 United States Code, is amended by adding at the end thereof
 2 the following new sentence: "For the purpose of this para-
 3 graph, an express or implied contract with a nonappropriated
 4 fund activity of or under the United States or a department
 5 or agency of the United States shall be considered an express
 6 or implied contract with the United States."

7 (c) Section 1302 of the Supplemental Appropriation
 8 Act, 1957 (70 Stat. 694; 31 U.S.C. 724 (a)), is amended
 9 by adding immediately before the period at the end thereof
 10 the following new proviso: "*Provided further*, That any
 11 judgment or compromise settlement against the United
 12 States arising out of an express or implied contract entered
 13 into by a nonappropriated fund activity of or under the
 14 United States or a department or agency of the United
 15 States, shall be paid in accordance with this section and sec-
 16 tions 2414, 2517, and 2518 of title 28, United States Code,
 17 and such activity shall reimburse the United States for a
 18 judgment or compromise settlement paid by the United
 19 States to the extent the Comptroller General of the United
 20 States determines that a reimbursement may be made with-
 21 out unduly jeopardizing the operation of such activity."

22 SEC. 2. (a) ~~The~~ *In addition to granting jurisdiction*
 23 *over suits brought after the date of enactment of this Act, the*
 24 *provisions of this Act shall also apply to claims and civil*
 25 *actions initiated dismissed before or pending on or after the*

1 date of enactment of this Act if the claim or civil action is
2 based upon a transaction, omission, or breach that occurred
3 not more than six years prior to the date of enactment of
4 this Act.

5 (b) The provisions of subsection (a) of this section
6 shall apply notwithstanding a determination or judgment
7 made prior to the date of enactment of this Act that the
8 United States district courts or the United States Court of
9 Claims did not have jurisdiction to entertain a suit on an
10 express or implied contract with a nonappropriated fund
11 activity of or under the United States or a department or
12 agency of the United States.

13 SEC. 3. The provisions of this Act do not apply to a
14 contract entered into by a nonappropriated fund activity of
15 or under the United States or a department or agency of
16 the United States which is subject to suit in its own name
17 under any other provision of law.

91ST CONGRESS
1ST SESSION

S. 980

[Report No. 91-268]

A BILL

To provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes.

By Mr. TYDINGS

FEBRUARY 7, 1969

Read twice and referred to the Committee on the
Judiciary

JUNE 24, 1969

Reported with amendments

Senate

June 30, 1969

-3-

10. CONSERVATION. Passed H. R. 10595, to extend and expand the Great Plains conservation program, with an amendment to substitute the language of S. 1790, a similar bill. S. 1790 was indefinitely postponed.
Sen. Dole inserted an editorial, "Hickel Begins to Sound Like a Conservationist," which outlines some of Secretary Hickel's views on preservation and development of public wildlife areas. pp. S7335-6
11. CONTRACTS. Passed as reported S. 980, to provide U. S. courts with jurisdiction over contract claims against nonappropriated fund activities of the U. S. p. S7305-6
12. APPROPRIATIONS. Passed with amendments H. R. 11582, the Treasury-Post Office appropriation bill, 1970 (pp. S7357-63). Conferees were appointed (p. S7363). House conferees have not been appointed.
Made its unfinished business H. R. 11612, the agricultural appropriation bill, 1970. p. S7370
13. RECREATION. Passed, 57-4, without amendment H. R. 11069, to authorize appropriations to satisfy final judgments against the U. S. in the last remaining condemnation proceeding which was brought to acquire property for the Padre Island National Seashore in Tex. (pp. S7363-6). This bill will now be sent to the President.
14. LABELING. Passed as reported S. 1689, to amend the Federal Hazardous Substances Act to protect children from toys and other articles intended for use by children which are hazardous due to the presence of electrical, mechanical, or thermal hazards. pp. S7367-70
15. PERSONNEL. Rep. Ervin inserted an article, "Inquisition by Insanity," discussing Federal employee rights. pp. S7318-20
16. WATERSHEDS. Received from the Budget Bureau several plans for works of improvement prepared under the Watershed Protection and Flood Prevention Act; to Agriculture and Forestry Committee. p. S7320
Received from the Budget Bureau several plans for works of improvement prepared under the Watershed Protection and Flood Prevention Act; to the Public Works Committee. p. S7320
17. INFORMATION. Received from U. S. Advisory Commission on Information its 24th report. p. S7320
18. FEDERAL AID. Received a Maine Legislature resolution memorializing Congress to revise the present system of administering Federal grants. pp. S7320-1
19. ENVIRONMENTAL QUALITY. Sen. Nelson inserted a report "Progress, Yes; Pollution, No," on the insistence of Oreg. and Wash. that a good environment and good business can and must be compatible. p. S7336
20. DAIRY. Sen. Yarborough supported enactment of a class I dairy bill. p. S7341

21. POLLUTION. Sen. Nelson announced his intention to introduce legislation to require that phosphorous be eliminated from detergents, and that adequate, nonpolluting substitutes be used. pp. S7344-5
22. TAXATION. Sen. Metcalf stated, "I see no reason...to wait...to discuss...our present tax laws." p. S7349
23. TEXTILE TRADE. Sen. Talmadge discussed Secretary of Commerce Stans' tour of Europe and Asia "to pave the way for future trade negotiations to eliminate some of the inequities which exist today," one purpose of his tour being "to lay the groundwork for negotiations...governing the rapidly rising level of textile imports entering the United States." pp. S7374-81
24. ECONOMY. Sen. Kennedy inserted the text of an interview with Dr. Walter Heller on the Nation's current economic policy in which he called for immediate planning by the administration "to alleviate the burden of rising unemployment likely to be produced as our current fiscal policy begins to bring inflation under control." pp. S7353-5
25. HUNGER. Sen. Percy inserted the statement of two witnesses before the Senate Select Committee on Nutrition and Human Needs held in East St. Louis. pp. S7349-53

EXTENSION OF REMARKS

26. ENVIRONMENT. Sen. Randolph commended the establishment of the Appalachian Center for Environmental Health at W. Va. University and inserted Sen. Byrd's address at the dedication services. pp. E5365-7
Reps. Dingell and Hanna favored establishment of the proposed Environmental Quality Council. pp. E5386, E5393-4
Rep. Rodino objected to diversion of raw sewage to the Passaic River. p. E5392
Rep. Blatnik criticized "inadequate funding of the Federal Government's share" for water pollution control programs. pp. E5396-7
27. EMPLOYMENT. Rep. Griffiths inserted a speech critical of alleged sex discrimination in employment, "The Challenge to Women Today." pp. E5369-70
28. EDUCATION. Rep. Dellenback requested full funding for vocational education programs. pp. E5374-5
29. RURAL-URBAN AFFAIRS. Rep. Zwach stated that he has been "urging that we must reverse the migration of the countryside people to the cities", and inserted a lecture, "The Future of the Small Community." pp. E5376-8
30. POPULATION. Rep. Baring inserted the text of an interview, "Overpopulation: New Science President Sees It As Greatest Threat To Mankind." pp. E5384
31. ST. LAWRENCE SEAWAY. Rep. Bray inserted an article which states that "As an exercise in politics the Seaway has achieved outstanding results; as an economic entity it cannot be described as more than a limited success." pp. E5385-6

the 20th century moves into a final quarter. But we cannot and we will not endorse a costly and indiscriminate involvement abroad merely because it is put forth under the label of internationalism.

We will vote necessary expenditures for the military defense of the nation. But we will not sign blank checks for billions at the sound of the bugle of fear. Rather, we will seek a balance, to the end that the nation may meet the urgent needs for stability within, no less than the demands for security from without.

As a political party, we will face the fact that the great and automatic national majority which was enjoyed for many decades is no more. It is not only that we have made our share of mistakes and suffered the consequences. It is also because issues have changed and attitudes have changed. The great constituency upon which the Democratic Party rested for four decades is now less clearly defined for us. In my judgment, it is there nonetheless. It is waiting to respond to new perceptions and to a rededicated political leadership which addresses itself not only to those who are satisfied with things as they are but which reaches out to those who are not.

It is no longer enough to extoll our contribution to the building of the nation as it is. The Democratic Party must look to what it can contribute in the building of the greater nation which we can become. In short, it is for us to rekindle the people's faith in the Democratic Party by searching out and pursuing the direction to a new unity at home and, in the world, to the building of a more durable peace. That is the quest on which we set forth tonight.

A LETTER TO A DAD ON FATHER'S DAY

Mr. DIRKSEN. Mr. President, there is a staff member of the Senate whose son has done extremely well. At any early age, he has been assuming a real responsibility. He wrote to his father on Father's Day, and I thought his letter was rather interesting. He wrote:

FATHER'S DAY 1969.

DEAR DAD: (On Your Day) I remember way back when we were just little rascals running all over the house and yard getting into everything and how you use to punish us to teach us right from wrong. I remember the fun we had with the horses, the chickens, the pig, the duck you caught while fishing, and the rabbits which we had. I remember the times when you provided plenty of work to keep us busy like raking leaves, painting, mowing the lawn, helping you with the garden, splitting wood, putting up the fence, and the many other little things that had to be done which helped us grow up. I remember watching you repair the many things, water pumps, water pipes, washers, dryers, the furnace, lawnmowers and many others from which I learned most of what I know today. I remember that someone who used to get up many mornings to help me with my paper route, when I was late or it was raining or just because he wanted to. I remember when you use to rush home just to watch us swim in races and how you helped me with my chickens and the 4-H projects. Oh yes I remember the unpleasant times when you seemed to forget your role as a father for what ever reasons they came about. But what I remember most far outweighs those times.

I will always remember the trips we took on the weekend to go fishing, at Point Lookout, the weekend trips to Nags Head. The trips to Orange County and into the Shenandoah Valley for swimming. The drive in movies and the Saturday trips to the office with you provided many hours of fun. Then

there were the trips to what was then the far away places like New York and Coney Island, Florida with its Key West, Clearwater, and the Marathon Key. Then there was Mexico where we took the sail boat ride around the island, went iguana hunting, and where I first tried to water ski. If you stop to think about it, we sure went to a lot of places. I still can remember Bermuda. The trip over on the sea plane when you played cards, the large turtles on the beach, the cave fish in the dark cave which I didn't see the fish because it was so dark and the trip over in the boat to the aquarium, and finally the finger bowl incident at the hotel. More recently, I remember the efforts made to allow me to be a Page in the House and to work at the Post Office and the Highway Dept. Then there was the time you helped me buy my first car, and the car at high school graduation.

I remember the many times which I may have disappointed you with my actions and also the times when I should have thanked you and didn't. So at a time when I cannot think of any material gift for you on your day, I give you this letter and say thanks, Dad, for all the things that you have done to make my life what it is today.

Your son,

Bob.

That is a very fitting tribute to his father from a son who made good.

JURISDICTION OF U.S. COURTS—NONAPPROPRIATED FUND ACTIVITIES

Mr. KENNEDY. Mr. President, I move that the Senate proceed to the immediate consideration of Calendar No. 259, S. 980.

The VICE PRESIDENT. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 980) to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Massachusetts.

The motion was agreed to; and the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with amendments, on page 2, line 22 after "(a)" strike out "The" and insert "In addition to granting jurisdiction over suits brought after the date of enactment of this Act, the"; in line 25, after the word "actions" strike out "initiated" and insert "dismissed before"; and in the same line, after the word "on" strike out "or after"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1346(a) (2) of title 28, United States Code, is amended by adding at the end thereof the following new sentence: "For the purpose of this paragraph, an express or implied contract with a nonappropriated fund activity of or under the United States or a department or agency of the United States shall be considered an express or implied contract with the United States."

(b) The first full paragraph of section 1491 of title 28, United States Code, is amended by adding at the end thereof the following new sentence: "For the purpose of this paragraph, an express or implied contract with a nonappropriated fund activity of or under the United States or a department or agency of the United States shall be considered an express or implied contract with the United States."

(c) Section 1302 of the Supplemental Appropriation Act, 1957 (70 Stat. 694; 31 U.S.C. 724(a)), is amended by adding immediately before the period at the end thereof the following new proviso: "Provided further, That any judgment or compromise settlement against the United States arising out of an express or implied contract entered into by a nonappropriated fund activity of or under the United States or a department or agency of the United States, shall be paid in accordance with this section and sections 2414, 2517, and 2518 of title 28, United States Code, and such activity shall reimburse the United States for a judgment or compromise settlement paid by the United States to the extent the Comptroller General of the United States determines that a reimbursement may be made without unduly jeopardizing the operation of such activity."

SEC. 2. (a) In addition to granting jurisdiction over suits brought after the date of enactment of this Act, the provisions of this Act shall also apply to claims and civil actions dismissed before or pending on the date of enactment of this Act if the claim or civil action is based upon a transaction, omission, or breach that occurred not more than six years prior to the date of enactment of this Act.

(b) The provisions of subsection (a) of this section shall apply notwithstanding a determination or judgment made prior to the date of enactment of this Act that the United States district courts or the United States Court of Claims did not have jurisdiction to entertain a suit on an express or implied contract with a nonappropriated fund activity of or under the United States or a department or agency of the United States.

SEC. 3. The provisions of this Act do not apply to a contract entered into by a nonappropriated fund activity of or under the United States or a department or agency of the United States which is subject to suit in its own name under any other provision of law.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. KENNEDY. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 268), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF AMENDMENTS

Amendment No. 1 makes clear that the provisions of the act are intended to have both a prospective application as outlined in the first section and section 3 of this act, and a retroactive application of limited duration as expressed in section 2.

Amendment No. 2 deletes the words "initiated" and "or after" as being superfluous in that, unless otherwise expressed, the provisions of a bill, upon enactment, have an immediate prospective effect. The words "dismissed before" are inserted to assure that the provisions of section 2 are applicable to cover past claims and civil actions whose operative facts occurred not more than 6 years prior to the date of enactment of this act.

NEED FOR LEGISLATION

S. 980 will fill a gap in the Tucker Act's waiver of immunity of the United States to claims based upon contracts with departments or agencies of the Government. The United States is liable in the Court of Claims of the United States and, in appropriate cases, in the district courts of the United States, to suits "upon any express or implied contract with the United States * * *." 28 U.S.C. 1491; 28 U.S.C. 1346(a) (2). The courts

have repeatedly held, however, that the Federal Government's liability to suit under these sections only exists with respect to contract obligations to be paid out of appropriated funds. See, e.g., *Kyer v. United States*, 369 F. 2d 714 (Ct. Claims 1966); *Pulaski Cab Co. v. United States*, 157 F. Supp. 955 (Ct. Claims 1968); *Keetz v. United States*, 168 Ct. Claims 205 (1964); *Bordon v. United States*, 116 F. Supp. 873 (Ct. Claims 1953).

The injustice and inequity worked by this Tucker Act "loophole" have been recognized often. See, e.g., *Borden v. United States*, 116 F. Supp. 873, 878-880 (Ct. Claims 1953). Indeed, a judge of the Court of Claims has declared "this is a matter which sorely needs congressional correction." See *Kyer v. United States*, 369 F. 2d 714, 719 (Ct. Claims 1966).

Nonappropriated fund activities are at present an anomaly of the law. When States have attempted to tax or regulate their activities these activities have successfully argued that they are immune from taxation and regulation as instrumentalities of the United States. See e.g., *Park Davis v. G.E.M., Inc.*, 201 F. Supp. 207 (D. Md. 1962); *Falls City Brewing Co. v. Reeves*, 40 F. Supp. 35 (W.D. Ky. 1941). When nonappropriated fund activities have been sued outside the United States they have successfully argued that, as instrumentalities of the U.S. Government, they are not liable to suit on contract in foreign courts. See, e.g., *Wuliger v. Headquarters, 7480th Supply Group (Special Activities) Labor Court*, Weisbaden, October 8, 1958, unreported. Courts have held, see, e.g., *United States v. Holcombe*, 277 F. 2d 143 (4th Cir. 1960); *Daniels v. Chanute Air Force Base Exchange*, 127 F. Supp. 920 (E.D. Ill. 1955), and the Justice Department has supported the ruling (letter dated July 13, 1960, from George Cochran Doub, Assistant Attorney General, 243 AF JAG Reporter, 15 (Aug. 1, 1960), that employees of nonappropriated fund activities, when performing their official duties, are employees of the United States and that the United States is liable under the Federal Tort Claims Act for injuries caused by their negligence. The United States has even sued in its own name to enforce contracts entered into by nonappropriated fund activities. See, e.g., *United States v. Howell*, 318 F. 2d 162 (9th Cir. 1963).

Despite this consistent identification of the nonappropriated fund activity with its parent department or agency and the United States, contractors with such activities have found it impossible to get a "day in court" when they allege breach of contract by such activities. Your committee believes that there is no rational reason to continue the immunity from contract suit presently afforded nonappropriated fund activities. The Defense Department, parent of the greatest number of these activities (military post exchanges, ships stores, etc.) has agreed that "no policy grounds [justify] nonappropriated fund instrumentalities in continuing to claim absolute immunity from suits on their contracts when Congress has waived such immunity in suits on contracts with the Federal Government itself." (See letter dated May 20, 1968, from Thomas H. Nielson, Assistant Secretary of the Air Force, to Hon. James C. Eastland, chairman, Committee on the Judiciary, U.S. Senate, reprinted at the conclusion of this report.) This position is buttressed by the fact that nonappropriated fund activities have become an important part of our national economy. The Armed Forces post exchange system—a prime example of a nonappropriated fund activity—is now the third largest department store chain with annual sales of over \$3.5 billion exceeded only by Sears, Roebuck & Co. and J. C. Penney Co.

LEGISLATIVE HISTORY

On March 14, 1968, Hon. Joseph D. Tydings, a Senator from Maryland, introduced S. 3163, a bill to provide courts of the United

States with jurisdiction over contract claims against nonappropriated fund activities of the United States. The bill was referred to the Committee on the Judiciary and to its Subcommittee on Improvements in Judicial Machinery. That subcommittee held hearings on S. 3163 on May 8 and 21, 1968. Witnesses before the subcommittee included: Hon. Hervey G. Machen, U.S. House of Representatives; Aaron Goldman, president, the Macke Corp., Cheverly, Md.; William E. Magee, Esq., Washington, D.C.; Dean Ralph C. Nash, professor of law, the George Washington University School of Law; Hon. Wilson Cowen, chief judge, U.S. Courts of Claims; and Col. Donald A. Williams, Office of the Judge Advocate General, Directorate of Civil Law, Litigation Division, Headquarters, U.S. Air Force. All witnesses heard favored enactment of S. 3163. The Department of the Air Force for the Department of Defense submitted a favorable report (May 20, 1968) on the bill, suggesting a number of technical and one substantive amendment. The Department of Justice submitted a report favoring S. 3163 in principle, but suggesting two amendments. (See letter dated Aug. 14, 1968, from Deputy Attorney General Warren Christopher to Hon. James O. Eastland, chairman, Committee on the Judiciary, U.S. Senate, reprinted at the conclusion of this report.) The National Aeronautics and Space Administration and the Department of Agriculture submitted reports favoring the bill in principle. (See letter dated May 21, 1968, from Robert F. Allnutt, Assistant Administrator for Legislative Affairs, and letter dated Oct. 3, 1968, from Secretary of Agriculture Orville Freeman to Hon. James O. Eastland, chairman, Committee on the Judiciary, U.S. Senate, reprinted at the conclusion of this report.) The House of Delegates of the American Bar Association approved S. 3163 in principle at the association's annual meeting in Philadelphia, August 28, 1968. (See letter dated Feb. 28, 1969, from John P. Tracey, assistant director, to Hon. Joseph D. Tydings, chairman, Subcommittee on Improvements in Judicial Machinery, U.S. Senate, reprinted at the conclusion of this report.)

On February 7, 1969, Senator Tydings introduced S. 980 which included several substantive changes from S. 3163 of the 90th Congress. These changes embodied in S. 980 were made on the basis of testimony received at last year's hearings. The first modification deleted the words "a department, agency, or armed force" contained in subsections (a), (b), and (c) of the first section of S. 3163 of the 90th Congress, and the words "the United States or a department or agency" were inserted in lieu thereof in subsections (a), (b), and (c) of the first section of S. 980. This change conformed the language of S. 980 to the breadth of the problem to be resolved and deleted the superfluous term "armed force" in S. 3163. Nonappropriated fund activities take on many organizational forms, some of which might not be included in the term "of or under a department, agency or armed force of the United States" as used in S. 3163 of the 90th Congress. However, the term "of or under the United States or a department or agency" in S. 980 brings within the scope of the bill all nonappropriated fund activities of the United States not specifically excepted. The Armed Forces of the United States, are, of course, departments or sub-departments of the United States and thus are included in the term "department or agency" as used in S. 980.

The second difference, reflected in section 2 of S. 980, clarified the limitation upon the retroactive effect of this legislation, making it the same as the general statute of limitations upon contract claims against the United States as stated in 28 U.S.C. § 2501(a), and prohibited the assertion of the defense of *res judicata* or other similar pleas to jur-

isdiction. The subcommittee hearings clearly demonstrated that there exists at least a small number of contractors with nonappropriated fund activities for whom there was no forum to hear their claims of contract breach. Some of these contractors bore the cost of litigation only to find access to the court barred by the judiciary's interpretation of the Tucker Act. Justice and equity dictate that the courts should be made available to those individuals whose claims first brought the immunity anomaly to light, and that, as to these actions, the Government should be precluded from raising the defense of their previous determination. Those determinations, it should be noted, were based solely on jurisdictional and not substantive grounds.

Another change in S. 980 was the addition of a new section 3 to the measure. Its language was intended to limit the application of the bill to contracts of nonappropriated fund activities which have not already shed their immunity to suit under other provisions of law. Examples, for instance, of nonappropriated fund activities already subject to suit in their names include the American Red Cross (36 U.S.C. § 2) and the Tennessee Valley Authority (16 U.S.C. § 831(c)).

The subcommittee held a hearing on March 4, 1969, in order to hear testimony on these changes in S. 980. The two witnesses heard were: Hon. Louis Spector, Commissioner of the U.S. Court of Claims; and Mr. Loren K. Olson, an attorney in Washington, D.C. Commissioner Spector, who was chairman of the section of public contract law of the American Bar Association when it considered an endorsed S. 3163 at the association's convention last August, testified that the ABA's endorsement of S. 3163 would equally apply to S. 980. Similarly, Mr. Olson concurred with the several modifications reflected in S. 980.

STATEMENT

Your committee believes that S. 980, as amended, is consistent with the public policy of the United States clearly expressed in the Tucker Act, that the sovereign immunity of the United States to contract suit should be waived when complaints are filed in an appropriate forum. S. 980 will provide contractors with nonappropriated fund activities of or under the United States or departments or agencies of the United States with the same contract remedies available to those who contract directly with those departments or agencies in furtherance of activities supported by appropriated funds. In so doing, S. 980 will erase an anachronistic and baseless distinction between suits on contracts of the United States to be paid out of appropriated funds and those to be paid out of nonappropriated funds. Your committee believes that equity, sound public policy, and efficient operation of nonappropriated fund activities demand favorable action upon S. 980.

AMERICAN POLICY TOWARD CHINA AND THE ESTABLISHMENT OF DIPLOMATIC RELATIONS WITH MONGOLIA

Mr. KENNEDY. Mr. President, recently the press carried a number of reports that are disturbing to many of us who favor a more enlightened policy by the United States toward Asia. According to these reports, the Secretary of State informed the President that it would be in the national interest for the United States to recognize the Mongolian People's Republic and establish diplomatic relations with that nation. These same reports also state, however, that the President has failed to act on this recommendation because of objections

91ST CONGRESS
1ST SESSION

S. 980

IN THE HOUSE OF REPRESENTATIVES

JULY 1, 1969

Referred to the Committee on the Judiciary

AN ACT

To provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 1346 (a) (2) of title 28, United States
4 Code, is amended by adding at the end thereof the following
5 new sentence: "For the purpose of this paragraph, an express
6 or implied contract with a nonappropriated fund activity
7 of or under the United States or a department or agency
8 of the United States shall be considered an express or implied
9 contract with the United States."

10 (b) The first full paragraph of section 1491 of title 28,

1 United States Code, is amended by adding at the end thereof
2 the following new sentence: "For the purpose of this para-
3 graph, an express or implied contract with a nonappropriated
4 fund activity of or under the United States or a department
5 or agency of the United States shall be considered an express
6 or implied contract with the United States."

7 (c) Section 1302 of the Supplemental Appropriation
8 Act, 1957 (70 Stat. 694; 31 U.S.C. 724 (a)), is amended
9 by adding immediately before the period at the end thereof
10 the following new proviso: "*Provided further*, That any
11 judgment or compromise settlement against the United
12 States arising out of an express or implied contract entered
13 into by a nonappropriated fund activity of or under the
14 United States or a department or agency of the United
15 States, shall be paid in accordance with this section and sec-
16 tions 2414, 2517, and 2518 of title 28, United States Code,
17 and such activity shall reimburse the United States for a
18 judgment or compromise settlement paid by the United
19 States to the extent the Comptroller General of the United
20 States determines that a reimbursement may be made with-
21 out unduly jeopardizing the operation of such activity."

22 SEC. 2. (a) In addition to granting jurisdiction over
23 suits brought after the date of enactment of this Act, the
24 provisions of this Act shall also apply to claims and civil
25 actions dismissed before or pending on the date of enact-

1 ment of this Act if the claim or civil action is based upon
2 a transaction, omission, or breach that occurred not more
3 than six years prior to the date of enactment of this Act.

4 (b) The provisions of subsection (a) of this section
5 shall apply notwithstanding a determination or judgment
6 made prior to the date of enactment of this Act that the
7 United States district courts or the United States Court of
8 Claims did not have jurisdiction to entertain a suit on an
9 express or implied contract with a nonappropriated fund
10 activity of or under the United States or a department or
11 agency of the United States.

12 SEC. 3. The provisions of this Act do not apply to a
13 contract entered into by a nonappropriated fund activity of
14 or under the United States or a department or agency of
15 the United States which is subject to suit in its own name
16 under any other provision of law.

Passed the Senate June 30, 1969.

Attest:

FRANCIS R. VALEO,

Secretary.

AN ACT

To provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes.

July 1, 1969

Referred to the Committee on the Judiciary

DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
FOR INFORMATION ONLY;
(NOT TO BE QUOTED OR CITED)

Issued Nov. 5, 1969
For actions of Nov. 4, 1969
91st -1st No. 180

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HIGHLIGHTS: House Rules Committee cleared potato research and promotion bill. House committee voted to report high timber yield bill. Sen. Magnuson introduced and discussed bill to provide separate session of Congress to consider appropriation bills.

Nov 4, 1969

HOUSE

1. POTATOES. The Rules Committee reported a resolution for consideration of H. R. 2777, the potato research and promotion bill. p. H10530
2. FORESTS. The Agriculture Committee voted to report (but did not actually report) H. R. 12025 with amendments, the proposed National Forest Timber Conservation and Management Act of 1969. p. D1021
3. CLAIMS. A subcommittee of the Judiciary Committee approved for full committee consideration S. 980, to provide courts of the U. S. with jurisdiction over contract claims against non-appropriated fund activities of the U. S. p. D1022
4. USER CHARGES; AIRWAYS. The Rules Committee reported a resolution for consideration of H. R. 14465, to provide for expansion of the Nation's airway system, and for the imposition of airport and airway user charges. p. H10530
5. APPROPRIATIONS. Rep. Mahon said the Appropriations Committee has laid out a tentative schedule for House action on the remaining appropriations bills for this session. p. H10474
6. LEGISLATIVE PROGRAM. The "Daily Digest" states that the House will consider H. J. Res. 934, to increase the authorization for the food stamp program today, Wed., 11-5. p. D1021

SENATE

7. CONSERVATION. The Judiciary Committee reported with an amendment S. 118, to grant the consent of the Congress to the Tahoe regional planning compact, to authorize the Secretary of the Interior and others to cooperate with the planning agency thereby created (S. Rept. 91-510). p. S13672
8. APPROPRIATION. Began debate on H. R. 12964, the State, Justice, and Commerce, the Judiciary and related agencies appropriation bill, 1970. pp. S13649, S13663, S13729-36
9. EXPORT CONTROL. Conferees were appointed on H. R. 4293, to provide for continuation of authority for regulation of exports. House conferees have been appointed. pp. S13737-8
10. MILITARY CONSTRUCTION. A subcommittee of the Armed Services Committee approved for full committee consideration H. R. 13018, to authorize certain construction at military installations. p. D1020
11. PROPERTY. The Commerce Committee voted to report (but did not actually report) S. 2289, to **make** unlawful unreasonable and undue property tax assessments on common and contract carrier property. p. D1020
12. INFORMATION. The Commerce Committee approved without amendment S. 4284, to **authorize appropriations to carry out the Standard Reference Data Act.** p. D1020
The Commerce Committee approved without amendment S. 1170, to authorize special studies by the Department of Commerce. p. D1020
13. SELECTIVE SERVICE. Sen. Griffin inserted an editorial, "Senate Democrats Mistaken in Postponing Draft Reform." pp. S13654-5

DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
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For actions of Feb. 19, 1970
91st-2nd; No. 22

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HIGHLIGHTS: Senate committee reported bill to authorize free meals to needy children. Sen. McGovern inserted his testimony on the farm bill. Sen. Percy urged reform in school lunch and commodity distribution programs. Rep. Conte objected to certain provisions of Administration's proposed farm bill. Rep. Melcher opposed proposals to end school milk and ACP programs.

HOUSE

1. **BUILDINGS.** Concurred in Senate amendments to H. R. 14464, to insure that certain facilities constructed be accessible to the physically handicapped. This bill will now be sent to the President. pp. H1073-4
2. **APPROPRIATIONS.** Passed, 315 to 81, H. R. 15931, making appropriations for Labor-HEW and related agencies for the fiscal year ending June 30, 1970. pp. H1074-1112

3. CLAIMS. The Judiciary subcommittee approved for full committee action S. 980, amended, to provide Federal courts of the U. S. with jurisdiction over contract claims against nonappropriated fund activities of the U. S.. p. D116
4. PERSONNEL; TRAINING. Both Houses received from the President forms supplying information on those employees who, during fiscal year 1969, participated in training in non-Government facilities in courses that were over one hundred and twenty days in duration and those employees who received awards or contributions incident to training in non-Government facilities; to Post Office and Civil Service Committees. pp. S1954, H1074
5. SCHOOL MILK; ACP. Rep. Melcher stated that "a pair of proposals repeatedly rejected by Congress have shown up on Capitol Hill again" to end the school milk program and the agricultural conservation practices program. pp. H1115-6
6. FARM PROGRAM. Rep. Conte opposed the payment limitation provisions of the administration's proposed farm bill and objected to the "manner in which this bill has been presented." pp. H1132-3
7. HOUSING. Rep. Albert criticized the Administration's "housing debacle." pp. H1117-8
8. FISCAL POLICY. Rep. Williams suggested that in order to accomplish a sound fiscal policy each year a budgetary sum should be earmarked to reduce the national debt. pp. H1133-4
9. EDUCATION. Rep. Steiger, Wisc., inserted a thesis, "A Goal for the 1970's, Consensus on the Federal-State Partnership in Education." pp. H1137-9
10. CONGRESSIONAL RECORD. Rep. Edwards, Ala., said the cost of the Congressional Record is an astounding fact, and offered suggestions to reduce this cost. p. H1118
11. LEGISLATIVE PROGRAM. Rep. Albert announced that on next Wed., Feb. 25, the House will consider the bill to establish an international quarantine station, and on Thurs. will consider the high timber yield bill. pp. H1112-3
12. EASTER RECESS. Rep. Albert announced that the Easter recess will extend from the close of business on Thurs., Mar. 26th to Monday noon, April 6. p. H1113
13. ADJOURNED until Mon., Feb. 23. p. H1113

SENATE

14. EDUCATION. Passed by unanimous vote H. R. 514, to extend programs of assistance for elementary and secondary education. pp. S2006-42
15. CREDIT UNIONS. Agreed to the conference report on H. R. 2, to amend the Federal Credit Union Act. This bill will now be sent to the President. p. S2018
16. SCHOOL LUNCH. The Agriculture and Forestry Committee reported with amendment H. R. 11651, to provide free or reduced-price meals to needy children (S. Rept. No. 91-707). p. S1954

DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
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For actions of March 23, 1970
91st-2nd; No. 45

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Environment.....4	Pigs.....9	Veterinarians.....6
Farm bill.....1	Recreation.....16	Water.....19
Farm cooperatives.....18	River projects.....2	Water pollution.....3,8
Farm program.....15	Rural areas.....21	Youth.....13
Fish.....20	Small Business.....11	

HIGHLIGHTS: Rep. Mahon inserted summary of final actions in appropriation bills,
First Session, 91st Congress.

SENATE

and Forestry

1. HEARINGS, FARM BILL. Committee on Agriculture /concluded hearings on farm legislation, receiving the testimony of the Secretary. p. D273
2. RIVER PROJECTS. Sen. McClellan inserted the address of the Chief of the Corps of Engineers and discussed the importance of the Arkansas River Project. pp. S4183-84
Sen. Stennis inserted the speech of Sen. McClellan delivered at the Rivers & Harbors Congress. pp. 4192-93
3. WATER POLLUTION. Sen. Yarborough inserted a newspaper article on the cost of arresting water pollution. pp. S410-11

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4. ENVIRONMENT. Sen. Hart inserted Sen. Muskie's speech on pollution of the environment delivered at a Michigan Teach-In. pp. S4193-95
5. TEXTILES. Sen. Thurmond urged the administration to "continue to take a firm stand on the import question and promote and sponsor protective legislation" to save the American textile industry. p. S4197
6. VETERINARIANS. Sen. Yarborough commended the contribution of the veterinarian to the health and welfare of man and inserted a magazine article entitled "We Often Forget The Importance Of Veterinarians". pp. S4214-15

HOUSE

7. CLAIMS. The Judiciary Committee reported with amendments S. 980, to provide U.S. courts jurisdiction over contract claims against nonappropriated fund activities. (H. Rept. 91-933). p. H2275
8. WATER POLLUTION. The Daily Digest states the "House received conference report on H. R. 4148, to amend the Federal Water Pollution Control Act. (H. Rept. 91-937) p. D275
9. PIGS, TGE. Rep. Findley inserted material to demonstrate the farm income losses due to TGE (transmissible gastroenteritis) in pig-producing areas and urged sufficient appropriations for research to discover a cure for the disease. pp. H2245-58
10. HOUSING. Rep. Anderson, Ill., saw new hope for housing as the result of Administration action and inserted newspaper articles on the subject. pp. H2259-61
11. SMALL BUSINESS ADMIN. Received the President's message on the Small Business Administration (H. Doc. No. 91-284). pp. H2178-79

EXTENSION OF REMARKS

12. APPROPRIATIONS. Rep. Mahon inserted summary of final actions in appropriation bills 91st Congress, First Session. pp E2373-4
13. YOUTH. Rep. Natcher commended the Future Homemakers of America. p. E2376
14. SUGARBEETS. Rep. Langen expressed concern about sugarbeet acreage allotment restrictions. pp E2379-80

BILLS INTRODUCED

15. FARM PROGRAM. H. R. 16590, by Rep. Burton, to adjust agricultural production, to provide a transitional program for farmers, and for other purposes; to Agriculture Committee.
16. RECREATION. H. R. 16593, by Rep. Foley, to amend the Land and Water Conservation Fund Act, and for other purposes; to Interior and Insular Affairs Committee.
17. SOIL CONSERVATION. H. R. 16596, by Rep. Sikes, to amend section 32(e) of title III of the Bankhead-Jones Farm Tenant Act, as amended, to authorize the

JURISDICTION OF U.S. COURTS—NONAPPROPRIATED FUND ACTIVITY

MARCH 23, 1970.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

MR. ROGERS of COLORADO, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 980]

The Committee on the Judiciary, to whom was referred the bill (S. 980) to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

1. Page 1, lines 6 through 8; page 2, lines 3 through 5; page 2, lines 13 through 15: Strike out "A nonappropriated fund activity of or under the United States or a department or agency of the United States" and insert in lieu thereof in each instance the following: "the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration".
2. Page 2, line 17, strike out the word "activity" and insert "instrumentality".
3. Page 2, line 19: Strike out everything after the word "States" down through and including everything on line 21 and insert in lieu thereof a period.
4. Page 3, line 10: Strike out everything down through and including everything on line 11 and insert in lieu thereof "instrumentality of the United States described in section 1 of this Act".
5. Page 3, lines 12 through 16: Strike out section 3 in its entirety.

PURPOSE OF THE AMENDMENTS

Amendment No. 1 limits the applicability of the proposal to the following nonappropriated fund activities: Army and Air Force

Exchange Service; Navy exchanges; Marine Corps exchanges; Coast Guard exchanges; and exchange councils of the National Aeronautics and Space Administration.

Amendments No. 2 and 4 make it clear that the activities in question are conducted by an "instrumentality of the United States".

Amendment No. 3 requires that the United States be reimbursed for any judgments which it pays as a result of a contract claim against one of the specified instrumentalities of the United States.

Amendment No. 5 eliminates language which has been made irrelevant as a result of amendment No. 1.

STATEMENT

S. 980 will remove a loophole from the Tucker Act, which provides for the waiving of the sovereign immunity of the United States with respect to contract claims. Under the Tucker Act, the United States is liable in the Court of Claims of the United States and, in appropriate cases, in the district courts of the United States, to suits "upon any express or implied contract with the United States * * *" 28 U.S.C. 1491; 28 U.S.C. 1346(a)(2). The courts have repeatedly held, however, that the Federal Government's liability to suit under these sections only exists with respect to contract obligations to be paid out of appropriated funds. See, e.g., *Kyer v. United States*, 369 F. 2d 714 (Ct. Claims 1966); *Pulaski Cab Co. v. United States*, 157 F. Supp. 955 (Ct. Claims 1968); *Keetz v. United States*, 168 Ct. Claims 205 (1964); *Bordon v. United States*, 116 F. Supp. 873 (Ct. Claims 1953).

The injustice and inequity worked by this Tucker Act "loophole" have been recognized often. See, e.g., *Bordon v. United States*, 116 F. Supp. 873, 878-880 (Ct. Claims 1953). Indeed, a judge of the Court of Claims has declared "this is a matter which sorely needs congressional correction." See *Kyer v. United States*, 369 F. 2d 714, 719 (Ct. Claims 1966):

Nonappropriated fund activities are at present an anomaly of the law. When States have attempted to tax or regulate their activities these activities have successfully argued that they are immune from taxation and regulation as instrumentalities of the United States. See e.g., *Park Davis v. G.E.M., Inc.*, 201 F. Supp. 207 (D. Md. 1962); *Falls City Brewing Co. v. Reeves*, 40 F. Supp. 35 (W.D. Ky. 1941). When nonappropriated fund activities have been sued outside the United States they have successfully argued that, as instrumentalities of the U.S. Government, they are not liable to suit on contract in foreign courts. See, e.g., *Wuliger v. Headquarters, 7480th Supply Group (Special Activities) Labor Court*, Weisbaden, October 8, 1958, unreported. Courts have held, see, e.g., *United States v. Holcombe*, 277 F. 2d 143 (4th Cir. 1960); *Daniels v. Chanute Air Force Base Exchange*, 127 F. Supp. 920 (E.D. Ill. 1955), and the Justice Department has supported the ruling (letter dated July 13, 1960, from George Cochran Doub, Assistant Attorney General, 243 AF JAG Reporter, 15 (Aug. 1, 1960), that employees of nonappropriated fund activities, when performing their official duties, are employees of the United States and that the United States is liable under the Federal Tort Claims Act for injuries caused by their negligence. The United States has even sued in its own name to enforce contracts entered into by nonappropriated fund activities. See, e.g., *United States v. Howell*, 318 F. 2d 162 (9th Cir. 1963).

Under S. 980 as passed by the Senate the sovereign immunity of the United States would be completely removed with respect to contracts of *all* nonappropriated fund activities. Under the Senate version, judgments against the United States would be paid by the Comptroller General of the United States and the nonappropriated fund activity would be required to reimburse the United States only "to the extent the Comptroller General of the United States determines that a reimbursement may be made without unduly jeopardizing the operation of such activity."

In evaluating the proposal as passed by the Senate, your committee concluded that the complete removal of sovereign immunity for *all* nonappropriated fund activities would be undesirable for several reasons:

First, since not every nonappropriated fund activity has sufficient assets to reimburse the United States, the cost of the judgment would in some cases be imposed on the taxpayer—a result which is inconsistent with the very concept of nonappropriated fund activities.

Second, the broad inclusion of all nonappropriated fund activities might create serious definitional questions, making it difficult to predict the outer limits of the liability of the Federal Government.

Third, data concerning all of the nonappropriated fund activities of the United States is unavailable. The Bureau of the Budget has not compiled such data nor can such data be obtained from the various Government agencies under which nonappropriated fund activities are conducted. Clearly, Congress ought not to expose the Federal Government to liability for *all* nonappropriated fund activities unless such data is assembled.

Under the amendments recommended by your committee, the sovereign immunity of the United States would be removed only with respect to the post exchange types of operations which are conducted within the Defense Department and the National Aeronautics and Space Administration. These types of activities have sufficient assets to pay their own way and, as a result, your committee recommends that they be required to reimburse the United States in the event of any judgment incurred by them which is paid by the United States. As a result, in the form recommended by your committee this proposal would result in no costs to the taxpayers.

Data is available concerning the exchange type activities covered under the amendments recommended by your committee. This data clearly indicates the commercial nature of these operations. For example, in fiscal year 1969, the gross sales and gross assets of each of the groups of exchanges covered by your committee's amendment are shown by the following table:

	Gross sales	Gross assets
Army and Air Force exchange services.....	\$1,961,000,000	\$629,000,000
Navy exchanges.....	705,000,000	165,570,000
Marine Corps exchanges.....	142,350,000	46,340,000
Coast Guard exchanges.....	16,885,390	13,796,784
Exchange councils of NASA.....	6,935,036	1,323,996

¹ Estimate for 1968.

DEPARTMENTAL COMMUNICATIONS

Attached and made a part of this report are a letter dated September 30, 1969, from Mr. Richard G. Kleindienst, Deputy Attorney General of the United States; a letter dated September 24, 1969, from Mr. Spencer J. Schedler, Assistant Secretary of the Air Force; a letter dated September 24, 1969, from Mr. Robert F. Allnutt, Assistant Administrator for Legislative Affairs, National Aeronautics and Space Administration; a letter dated September 24, 1969, from Mr. Clifford M. Hardin, Secretary of Agriculture; and a letter dated August 27, 1969, from Mr. R. F. Keller, Assistant Comptroller General of the United States.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., September 30, 1969.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on S. 980, a bill to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes.

The bill would permit the United States to be sued under the Tucker Act (28 U.S.C. 1346(a) and 1491) upon express or implied contracts of a nonappropriated fund activity of or under a department, agency, or armed force of the United States. Although a judgment or compromise settlement against the United States arising out of an express or implied contract of a nonappropriated fund activity is required to be paid out of funds of the United States in accordance with 31 U.S.C. 724(a) and 28 U.S.C. 2414 and 2518, the United States is to be reimbursed by the activity for any such payment to the extent that the Comptroller General of the United States determines that reimbursement may be made without unduly jeopardizing the operations of the activity.

All claims in civil actions initiated or pending on or after the date of enactment of the bill would come within its terms, provided the claim or civil action is based upon a transaction, omission or breach that occurred not more than 6 years prior to the date of enactment of the bill. This provision would also be applicable to any claim or civil action based on an occurrence within this same 6-year statutory period if the U.S. district court or the U.S. Court of Claims had dismissed the case on lack of jurisdiction to entertain the suit.

The bill would not apply to a contract entered into by any non-appropriated fund activity of or under the United States or a department or agency of the United States which is subject to suit in its own name under any other provision of law.

The U.S. Supreme Court and the lower Federal courts have held that nonappropriated fund activities are instrumentalities of the United States and, in the absence of an express statutory waiver, contract suits against the activity are barred by sovereign immunity. The contractor, in such cases, has also been held to have no remedy against the United States because the Government's consent to suit under the Tucker Act extends only to claims upon contracts

which obligate appropriated funds. As a result persons with contract claims against a nonappropriated fund activity are left with no judicial remedy.

The Department of Justice is in accord with the purposes of S. 980, that an appropriate judicial remedy be available in such cases. However there is one feature of the bill which we suggest amending.

The Government should not be liable under the Tucker Act for the procurement activities of a group that is not subject to control by the responsible officials of the Government. To avoid the possibility of such an interpretation, we believe that the phrase "of or under the departments and agencies of the United States" in sections 1(a) and 1(b) should be modified by adding "and subject to the supervision and control thereof" immediately thereafter.

The Department of Justice recommends enactment of this legislation amended as suggested.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,
Washington, D.C., September 24, 1969.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This replies further to your request for the views of the National Aeronautics and Space Administration on the bill S. 980, to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes.

The bill would correct an inequity resulting from a series of court decisions holding that neither a nonappropriated fund activity nor the United States may be sued on a nonappropriated fund activity contract, the former because it is not a suable entity, and the latter because the United States is not a party to the contract and has not expressly consented to be obligated by such contracts. The bill would afford members of the public a judicial forum to obtain resolution of claims arising out of their contracts with such activities.

The bill would amend 28 U.S.C. sections 1346(a)(2) and 1491 to provide U.S. district courts and the U.S. Court of Claims with jurisdiction over contract claims involving nonappropriated fund activities of the United States. That would be accomplished by providing that contracts with such activities shall be considered as contracts with the United States for that purpose. Judgments or compromise settlements arising out of such contracts would be paid from appropriated funds and the United States would be reimbursed by the activity involved to the extent the Comptroller General determines that the reimbursement would not unduly jeopardize the operations of the activity. The bill would include coverage of claims and civil actions dismissed before or pending on the date of enactment of the act if the claim or civil action is based upon a transaction that occurred not more than 6 years prior to the date of such enactment.

If enacted the bill would provide no serious administration problem for NASA. Compared to certain other agencies of the Federal Government, particularly the Department of Defense, NASA's use of non-appropriated fund activities is, and has been, nominal. For that reason it hesitates to recommend specific amendments which might have a serious impact on other agencies of the Government. However, it might be desirable for those more seriously concerned to propose a definition of the term "nonappropriated fund activity."

There are many semiofficial activities, such as bowling leagues, employee clubs, and baseball teams, operating incidentally to Government agencies and which Congress might not want to include within the bill's operation. In any event, clarification of the term would simplify consideration of the bill and facilitate its administration if it is enacted.

Subject to the foregoing comments, the National Aeronautics and Space Administration perceives no objection to the enactment of S. 980.

The Bureau of the Budget has advised that, from the standpoint of the administration's program, there is no objection to the submission of this report to the Congress.

Sincerely yours,

ROBERT F. ALLNUTT,
Assistant Administrator for Legislative Affairs.

DEPARTMENT OF AGRICULTURE,
Washington, September 24, 1969.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your letter of July 17, 1969, requesting the views of this Department of S. 980, a bill to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes.

The proposed legislation would amend 28 U.S.C. 1346(a)(2) and 28 U.S.C. 1491 by adding a new sentence which would provide that an express or implied contract with a nonappropriated fund activity of or under a department or agency of the United States shall be considered to be a contract entered into by the United States. The payment of a judgment or compromise settlement against the United States arising out of a suit on such a contract shall be paid by the United States which shall be reimbursed by the nonappropriated fund activity to the extent the Comptroller General shall determine that such reimbursement may be made without unduly jeopardizing the operation of the activity. The bill exempts from its provisions contracts of a nonappropriated fund activity of a department or agency of the United States which is subject to suit in its own name.

This Department is in accord with the purpose of the bill. However, we do not favor enactment of the bill as it is presently drafted.

The reasons for our view and our proposed amendments to the bill are set forth in an attachment to this report.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

CLIFFORD M. HARDIN, *Secretary*.

ATTACHMENT TO S. 980

Nonappropriated fund "activities" are generally established by Federal departments and agencies to carry on some activity in support of the main operations of the agency in which they are located. These activities do not use appropriated funds to defray expenses but usually conduct some revenue-producing activity or collect dues and admission fees which support their operations. We believe that the bill was primarily designed to cover these peripheral military institutions, such as officers' clubs, post exchanges and ships' stores, which are considered by the courts to be instrumentalities of the United States and yet are not supported by appropriated funds. *Standard Oil Co. v. Johnson*, 316 U.S. 481 (1942). However, this Department has a number of nonappropriated fund activities which may be affected by the provisions of the bill.

Nonappropriated fund "activities" conduct many of their functions through contracts with third parties. Claims for breach of contract and other disputes will arise under the contracts. Under the present law, a person who has a contract claim against a nonappropriated fund "activity" has no judicial forum in which to seek redress against the "activity" or the United States. Since nonappropriated fund activities are considered instrumentalities of the United States, the courts have held that the absence of any express statutory waiver of sovereign immunity bars contract suits directly against the "activity" itself. *Edelstein v. South Post Officers Club*, 118 F. Supp. 40 (E.D. Va. 1951); *American Commercial Co. v. U.S. Officers and Noncommissioned Officers Club, ETO*, 187 F. 2d 91 (D.C. Cir. 1951).

The contractor has no remedy by suit against the United States under the Tucker Act because both the district courts and the Court of Claims have held that the Government's consent to suit under that statute extends only to claims upon contracts which obligate appropriated funds and does not include contracts with nonappropriated fund "activities". *Bailey v. United States*, 201 F. Supp. 604 (D. Alaska, 1962); *Bleuer v. United States*, 117 F. Supp. 509 (E.D. S.C. 1950); *Kyer v. United States*, 177 Ct. Cls. 747, 369 F. 2d 714 (1966), *cert. denied*, 387 U.S. 929 (1967).

These rules have left persons who contract with nonappropriated fund "activities" without any judicial forum in which to enforce their rights under the contracts. Since Congress has waived the immunity of the Government from suit by contractors who deal with its departments and agencies, there is no valid reason to exempt nonappropriated fund "activities" from the same liability.

We are, however, concerned that the bill may extent liability to contracts of activities which this Department cannot supervise or control, such as informal associations of employees for recreational purposes. It is our view that the United States should not be liable under the Tucker Act for the activities of a group which is not subject to procurement control by the proper officials of this Department.

There are other statutes administered by this Department (e.g., the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601 et seq.; and the Cotton Research and Promotion Act, 7 U.S.C. 2101 et seq.) that authorize the carrying out of specified activities by designated agencies of the Secretary of Agriculture but expressly limit the source of funds that may be used to defray the expenses of such activities. Thus, under the Agricultural Marketing Agreement Act of 1937, as amended, the expenses of the agencies appointed to administer marketing order programs (including those for carrying out the Department's responsibilities with respect to the control and disposition of certain surplus pools of regulated commodities, and marketing research and development projects, including paid advertising for specified commodities), are required (7 U.S.C. 608c (6)(I) and 610(b)(2)(ii)) to be paid from proceeds of such pools or from funds collected pursuant to the applicable marketing order programs by way of handler assessments. Similarly, under the Cotton Research and Promotion Act, the funds to cover expenses for carrying out authorized activities of the Cotton Board are to be derived solely from assessments on producers collected pursuant to the Cotton Research and Promotion Order (7 CFR part 1205) effective thereunder. In this connection, section 2118 of the Cotton Research and Promotion Act provides as follows:

"There is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated such funds as are necessary to carry out the provisions of this Act. The funds so appropriated shall not be available for the payment of the expenses of expenditures of the Cotton Board in administering any provisions of any order issued pursuant to the terms of this Act."

The Department of Agriculture also has extensive inspection and grading programs, administered by the Department, which are financed out of nonappropriated funds obtained from user fees. These are principally effective under the Agricultural Marketing Act of 1946, 7 U.S.C. 1622(h) et seq. Under these programs inspection and grading service is provided to eligible persons on the basis of express or implied contracts and such activities presumably would also be covered by the bill. Some such programs are administered on a Federal-State cooperation basis, and the additional question could arise as to whether a contract made between a State inspection agency and an individual to provide inspection or grading under such a Federal-State arrangement would give rise to potential liability against the United States.

While this Department does not object to the purpose of the bill as applied to these programs, attention is directed to these situations because of the potential charges against the Treasury which could arise due to the bill, if enacted.

We believe, however, that the bill should be revised so as to state more clearly the intended coverage of the bill and to avoid latent ambiguity which now appears to be present in the bill.

As the bill is written, it is not clear what is meant by a contract with a nonappropriated fund "activity". As previously stated, post exchanges and the like have been held to be "instrumentalities" of the United States. They are immune from suit because of such status, not because of their "activity". We, therefore, suggest that the key wording describing these contracts be amended to read "* * * an

express or implied contract with a department or agency of the United States or an agency or instrumentality thereof with respect to a nonappropriated fund activity thereof. * * *

In view of the foregoing, we suggest the following amendments to S. 980:

1. At page 1, lines 5 to 9, and at page 2, lines 2 to 6, delete "For the purpose of this paragraph, an express or implied contract with a nonappropriated fund activity of or under the United States or a department or agency of the United States shall be considered an express or implied contract with the United States." and substitute therefor the following: "For the purpose of this paragraph, an express or implied contract with a department or agency of the United States or an agency or instrumentality thereof with respect to a nonappropriated fund activity thereof, shall be considered an express or implied contract with the United States."

2. At page 2, lines 13 to 15, and at page 3, lines 13 to 15, delete "by a nonappropriated fund activity of or under the United States or a department or agency of the United States" and substitute therefor "by a department or agency of the United States or an agency or instrumentality thereof with respect to a nonappropriated fund activity thereof".

3. At lines 17 and 21 on page 2 delete the word "activity" and substitute therefor "department or agency of the United States or an agency or instrumentality thereof with respect to a nonappropriated activity thereof".

4. At page 3, lines 9 to 11, delete "with a nonappropriated fund activity of or under the United States or a department or agency of the United States" and substitute therefor "with a department or agency of the United States or an agency or instrumentality thereof with respect to a nonappropriated activity thereof".

DEPARTMENT OF THE AIR FORCE,
Washington, September 24, 1969.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: This refers to your request to the Secretary of Defense for the views of the Department of Defense with respect to S. 980, 91st Congress, an act to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes. The Secretary of Defense has delegated to the Department of the Air Force the responsibility for expressing the views of the Department of Defense.

The purpose of S. 980 is to amend title 28, United States Code, to confer jurisdiction on, and authorize suits to be brought against the United States in, the United States district courts and the Court of Claims on causes of action arising out of contracts entered into by nonappropriated fund instrumentalities of or under the United States or a department or agency of the United States. It thus would afford a remedy to sue and recover on a contract or a nonappropriated fund instrumentality of the United States where no such remedy now exists. The bill would also amend the Supplemental Appropriation

Act, 1957 (31 U.S.C. 724a) to specifically provide for the payment of judgments and compromise settlements against the United States arising out of a contract entered into by a nonappropriated fund instrumentality, and to specify that the United States would be reimbursed from the fund to the extent the Comptroller General determines such reimbursement would not jeopardize its operation. The bill would apply to civil actions initiated or pending on or after the date of its enactment if the basis for the action did not occur more than 6 years prior to the date of enactment, notwithstanding determinations before the date of enactment that the courts involved lacked jurisdiction. In addition, the bill provides that it would not apply where a nonappropriated fund of the United States is subject to suit in its own name under any other provision of law.

Since activities supported from nonappropriated funds are carried on under many departments and agencies of the United States, the effect of the bill would be Government-wide in its implications and effects. These activities, which cannot be supported by appropriated funds, must be financed by certain revenue-producing activities of the department or agency concerned. With respect to the Department of Defense, nonappropriated funds support certain welfare, comfort, and recreational needs of military personnel, and civilian personnel in proper cases, which cannot be provided for by appropriated funds. The legal status of a nonappropriated fund is that of a Federal instrumentality. This status confers on the instrumentality the same privileges and immunities that belong to the Federal Government, one of the more important of which is freedom from suit unless consent thereto has been granted by Congress.

At the present time, neither the nonappropriated fund instrumentality nor the United States is amenable to suit in the U.S. district courts or the Court of Claims on causes of action arising from contracts of such activities (Court of Claims, *Borden v. United States*, 116 F. Supp. 873 (Ct. Cl. 1953); *Pulaski Cab Company v. United States*, 157 F. Supp. 955 (Ct. Cl. 1958); Federal district court, *Edelstein v. South Post Officers Club*, 118 F. Supp. 40 (E. D. Va. 1951)). A nonappropriated fund instrumentality may not be sued because it has a privileged status as an integral part of a department or agency of the United States and is not subject to suit unless consent thereto has been granted by Congress. The United States cannot be sued because obligations arising out of contracts between the nonappropriated fund instrumentalities and private individuals are not liabilities of the United States. S. 980 would correct this anomalous situation which stems from lack of jurisdiction of courts to try actions arising from contracts of nonappropriated fund instrumentalities.

In the *Borden* case, cited above, the Court of Claims suggested that Congress be asked to legislate on the subject and make either the nonappropriated fund instrumentality or the United States subject to suit. The alternative adopted by S. 980 is to make the United States subject to suit on a contract entered into by a nonappropriated fund instrumentality. This Department believes that this is the preferable approach since it is consistent with the concept that the nonappropriated fund instrumentality is conducting a governmental function.

There appear to be no policy grounds justifying nonappropriated fund instrumentalities in continuing to claim absolute immunity from

suits on their contracts when Congress has waived such immunity in suits on contracts of the Federal Government itself.

Although the Department of the Air Force, on behalf of the Department of Defense, has no objection to the basic purpose of S. 980, the bill has certain objectionable features.

For example, section 2 of the bill would apply to civil actions initiated or pending on or after the date of the bill's enactment if the matters giving rise to the civil actions occurred not more than 6 years prior to the date of enactment. This would permit suits to be brought against the United States even with respect to contractual claims that had been otherwise disposed of prior to the enactment of S. 980. Presumably, if the statute of limitations did not act as a bar, it would permit reinstitution of claims such as those disposed of in the *Pulaski* case, cited above. It is believed that the bill should not authorize the revival of old and stale causes of action. Accordingly, it is suggested that this provision be amended to read: "This Act applies to contractual claims arising on or after the effective date of this Act."

There may be some question as to the nature and scope of the nonappropriated funds which would be covered by S. 980. In the Department of Defense, the term "nonappropriated fund instrumentalities of the United States" means an instrumentality established, operated, and controlled under regulations prescribed by the head of the military department concerned to perform a function beneficial to the United States, or the military or civilian personnel of the department; the funds of which are derived from sources other than appropriations by Congress. This standard can be applied on a Government-wide basis. It is, therefore, suggested that on lines 6 to 8, page 1, and lines 4 and 5, page 2, of the bill, the words "activity of or under the United States or a department or agency of the United States" be deleted and "instrumentality of the United States, established and operated under regulations prescribed by the head of the department or agency concerned" be inserted in place thereof. The substitution of "instrumentality" for "activity" is also recommended on page 2, lines 13 and 21, and on page 3, lines 10 and 13 of the bill.

S. 980 would not apply where the right to sue and recover exists under present law, for example (1) against the instrumentality in its own name, as is the case with Federal credit unions (12 U.S.C. 1757 (2)); (2) against the agency, as is the case with respect to the Tennessee Valley Authority (16 U.S.C. 831c(b)); or (3) against the United States, as is apparently the case with respect to the Veterans' Canteen Service.

It seems obvious that employees' associations organized by employees for their own benefit and chartered pursuant to the local laws of a State or the District of Columbia, as is the case with respect to the Veterans' Administration Central Office Employees' Association, are not nonappropriated fund instrumentalities of the United States and would not be subject to the provisions of S. 980.

We believe that the determination as to the extent reimbursement can be made by a nonappropriated fund to the United States without unduly jeopardizing its operations should be made by the head of the department or agency having knowledge of the status of the fund involved rather than by the Comptroller General. At the present time, the Comptroller General is not authorized to conduct independent audits of nonappropriated fund activities, since in 1949 the House Armed Services Committee, which closely monitors the operation of

the military exchanges, specifically precluded the Comptroller General from any real accounting or independent audit of exchanges so long as the military services have annual audits conducted by certified public accounting firms. This is the system that is in effect today.

S. 980 does not specifically provide that the provisions of the so-called Wunderlich Act (act of May 11, 1954, ch. 199, 41 U.S.C. 321, 322) are applicable to contracts of nonappropriated fund instrumentalities of the United States with respect to the judicial review of administrative decisions. In order to eliminate any doubt on this point, it is suggested that a new section be inserted in the bill to clarify this point.

As a technical drafting matter, it is noted that on page 2, line 8, the citation "31 U.S.C. 724(a)" should read "31 U.S.C. 724a".

While the Department of the Air Force, on behalf of the Department of Defense, agrees with the general purpose of S. 980, it recommends that it be amended as indicated in order to accomplish better its intended purpose.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

SPENCER J. SCHEDLER,
Assistant Secretary of the Air Force.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., August 27, 1969.

B-145809.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your letter of July 17, 1969, in which you requested an expression of our views on S. 980, which would provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States.

We have no special information as to the desirability of the proposed legislation. Therefore, we do not make any recommendation on the merits of its enactment.

We do have some concern, however, as to that part of the bill which provides that the activity shall reimburse the United States for a judgment or compromise settlement paid by the United States "to the extent the Comptroller General of the United States determines that a reimbursement may be made without unduly jeopardizing the operation of such activity." The bill does not provide any guidelines for consideration in making such a determination.

Also as noted in our reports dated June 12, 1961, and May 6, 1963, B-145809, to your committee on the somewhat related bills, H.R. 840, 87th Congress, and H.R. 547, 88th Congress, respectively, "* * * the operations of many of such activities are not subject to

the laws, regulations, or other safeguards applicable to Government agencies, are not subject to Government audit and are not accountable to the Treasury."

Under the circumstances it is suggested that the bill provide that the Comptroller General's determination as to reimbursement be made in his discretion upon written findings and recommendations made by the head of the department, agency, or independent establishment concerned. Compare the recommendations made by the representatives of the Air Force Judge Advocate General and the Office of the Secretary of the Air Force on pages 197 and 199 of the hearings before the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, U.S. Senate, 90th Congress, second session, on S. 3163.

Sincerely yours,

R. F. KELLER

(For the Comptroller General of the United States).

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives, there is printed below in roman existing law in which no change is proposed by the bill as reported. Matter proposed to be stricken by the bill as reported is enclosed in black brackets. New language proposed by the bill as reported is printed in italic.

TITLE 28, UNITED STATES CODE

Chapter 85—DISTRICT COURTS; JURISDICTION

* * * * *

§ 1346. United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

* * * * *

(6) Any other civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort. *For the purpose of this paragraph and expressed or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.*

* * * * *

Chapter 91—COURT OF CLAIMS

§ 1491. Claims against United States generally; actions involving Tennessee Valley Authority

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. *For the purpose of this paragraph an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration.*

* * * * *

Section 1302 of the Supplemental Appropriation Act, 1957
(31 U.S.C. § 724a)

§ 1302. There are appropriated, out of any money in the Treasury not otherwise appropriated, and out of the postal revenues, respectively, such sums as may hereafter be necessary for the payment, not otherwise provided for, as certified by the Comptroller General, of final judgments, and awards and compromise settlements (not in excess of \$100,000, or its equivalent in foreign currencies at the time of payment, in any one case) which are payable in accordance with the terms of sections 2414, 2517, 2672, or 2677 of title 28, United States Code, together with such interest and costs as may be specified in such judgments or otherwise authorized by law: *Provided*, That, whenever a judgment of a district court to which the provisions of section 2411(b) of title 28, United States Code, apply, is payable from this appropriation, interest shall be paid thereon only when such judgment becomes final after review on appeal or petition by the United States, and then only from the date of the filing of the transcript thereof in the General Accounting Office to the date of the mandate of affirmance (except that in cases reviewed by the Supreme Court interest shall not be allowed beyond the term of the Court at which the judgment was affirmed): *Provided further*, That whenever a judgment rendered by the Court of Claims is payable from this appropriation, interest payable thereof in accordance with section 2516(b) of title 28, United States Code, shall be computed from the date of the filing of the transcript thereof in the General Accounting Office: *Provided further*, That any judgment or compromise settlement against the United States arising out of an express or implied contract entered into by the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be paid in accordance with this section and sections 2414, 2517, and 2518 of title 28, United States Code, and such instrumentality shall reimburse the United States for a judgment or compromise settlement paid by the United States.

S. 980

[Report No. 91-933]

IN THE HOUSE OF REPRESENTATIVES

JULY 1, 1969

Referred to the Committee on the Judiciary

MARCH 23, 1970

Reported with amendments, committed to the Committee of the Whole House
on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

AN ACT

To provide courts of the United States with jurisdiction over
contract claims against nonappropriated fund activities of the
United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 1346 (a) (2) of title 28, United States
4 Code, is amended by adding at the end thereof the following
5 new sentence: "For the purpose of this paragraph, an ex-
6 press or implied contract with a ~~nonappropriated fund ac-~~
7 tivity of ~~or under the United States or a department or~~
8 agency of the United States *the Army and Air Force Ex-*
9 change Service, Navy Exchanges, Marine Corps Exchanges,
10 *Coast Guard Exchanges, or Exchange Councils of the Na-*

1 *tional Aeronautics and Space Administration* shall be con-
 2 sidered an express or implied contract with the United
 3 States.”.

4 (b) The first full paragraph of section 1491 of title 28,
 5 United States Code, is amended by adding at the end thereof
 6 the following new sentence: “For the purpose of this para-
 7 graph, an express or implied contract with a ~~nonappropriated~~
 8 ~~fund activity of or under the United States or a department~~
 9 ~~or agency of the United States~~ *the Army and Air Force*
 10 *Exchange Service, Navy Exchanges, Marine Corps Ex-*
 11 *changes, Coast Guard Exchanges, or Exchange Councils of*
 12 *the National Aeronautics and Space Administration* shall be
 13 considered an express or implied contract with the United
 14 States.”.

15 (c) Section 1302 of the Supplemental Appropriation
 16 Act, 1957 (70 Stat. 694; 31 U.S.C. 724 (a)), is amended
 17 by adding immediately before the period at the end thereof
 18 the following new proviso: “*Provided further, That any*
 19 *judgment or compromise settlement against the United*
 20 *States arising out of an express or implied contract entered*
 21 *into by a nonappropriated fund activity of or under the*
 22 *United States or a department or agency of the United*
 23 *States, the Army and Air Force Exchange Service, Navy*
 24 *Exchanges, Marine Corps Exchanges, Coast Guard Ex-*
 25 *changes, or Exchange Councils of the National Aeronautics*

1 *and Space Administration*, shall be paid in accordance with
 2 this section and sections 2414, 2517, and 2518 of title 28,
 3 United States Code, and such ~~activity~~ *instrumentality* shall
 4 reimburse the United States for a judgment or compromise
 5 settlement paid by the United States to the extent the
 6 Comptroller General of the United States determines that
 7 a reimbursement may be made without unduly jeopardizing
 8 the operation of such activity.” *States.*”

9 SEC. 2. (a) In addition to granting jurisdiction over
 10 suits brought after the date of enactment of this Act, the
 11 provisions of this Act shall also apply to claims and civil
 12 actions dismissed before or pending on the date of enact-
 13 ment of this Act if the claim or civil action is based upon
 14 a transaction, omission, or breach that occurred not more
 15 than six years prior to the date of enactment of this Act.

16 (b) The provisions of subsection (a) of this section
 17 shall apply notwithstanding a determination or judgment
 18 made prior to the date of enactment of this Act that the
 19 United States district courts or the United States Court of
 20 Claims did not have jurisdiction to entertain a suit on an
 21 express or implied contract with a nonappropriated fund
 22 activity of or under the United States or a department or
 23 agency of the United States: *instrumentality of the United*
 24 *States described in section 1 of this Act.*

25 SEC. 3. The provisions of this Act do not apply to a

1 contract entered into by a nonappropriated fund activity of
 2 or under the United States or a department or agency of
 3 the United States which is subject to suit in its own name
 4 under any other provision of law.

Passed the Senate June 30, 1969.

Attest: FRANCIS R. VALEO,
Secretary.

Union Calendar No. 436

91ST CONGRESS
 2^D SESSION

S. 980

[Report No. 91-933]

AN ACT

To provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes.

JULY 1, 1969

Referred to the Committee on the Judiciary

MARCH 23, 1970

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
NOT TO BE QUOTED OR CITED)

For actions of April 7, 1970
91st-2nd; No. 54

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HIGHLIGHTS: Senate committee reported pay bill. Senate passed land utilization bill.
Senate committee reported housing bill. Sen. Scott praised "fine work" of SCS.
House passed surplus dairy products bill.

HOUSE

1. DAIRY PRODUCTS. Passed under suspension of the rules S. 2595, to give nonprofit school lunch programs priority in the use of certain surplus dairy products. This bill will now be sent to the President. H. R. 12588, a similar bill, was indefinitely postponed due to the passage of S. 2595. pp. H2682-3
2. CLAIMS. Passed under suspension of the rules S. 980, to provide courts of the U. S. with jurisdiction over contract claims against nonappropriated fund activities of the U. S. pp. H2680-2

3. CONSERVATION. The Merchant Marine and Fisheries subcommittee on Fish and Wildlife approved H. R. 15770, the proposed water bank bill. p. D322
4. CIVIL SERVICE. Both Houses received the annual report of the Civil Service Commission for 1969 (H. Doc. 91-238). pp. H2677, S5195
5. EDUCATION. Agreed, 312 to 58, to the conference report on H. R. 514, to extend programs of assistance for elementary and secondary education. This bill will now be sent to the President. pp. H2685-700
6. APPROPRIATIONS. Received from the Budget Bureau a report listing appropriations that have been apportioned on a basis which indicates a necessity for supplemental estimates of appropriations to permit pay increases granted pursuant to law; to Appropriations Committee. p. H2731
Received from the President proposed amendments to the requests for appropriations transmitted in the budget for fiscal year 1971, to implement pollution abatement objectives (H. Doc. No. 91-300); to Appropriations Committee.
7. AUDITING; CCC. Received from GAO a report on the examination of financial statements of the Commodity Credit Corporation for the fiscal year ended June 30, 1969 (H. Doc. No. 91-301); to Government Operations Committee. p. H2731
8. COFFEE. Both Houses received from the Secretary of State a draft of proposed legislation to continue until the close of September 30, 1973, the International Coffee Agreement Act of 1968; to Senate Foreign Relations and House Ways and Means Committees. pp. H2731, S5162

SENATE

9. FISH, WILDLIFE, RECREATION, MARKETING ORDERS, PAPAYAS. Passed with committee amendments S. 3598 to authorize Federal assistance for fish, wildlife, and recreation. pp. S5151-52
Passed with committee amendment S. 2484 authorizing marketing agreements with respect to Hawaiian papayas. pp. S5152-53
10. SALARIES. The Committee on Post Office and Civil Service reported S. 3690, Federal Employees Salary Act, 1970 (S. Rept. No. 91-763). p. S5163
11. HOUSING. The Committee on Banking & Currency reported an original bill S. 3685 "Emergency Home Finance Act of 1970" (S. Rept. No. 91-761). p. S5163
12. SCS. Sen. Scott lauded the work of SCS in Pennsylvania and inserted a summary of agency activities. pp. S5199-5200
13. ENVIRONMENT. Sen. Mondale spoke on the detrimental aspects of electric power production and inserted two articles suggesting new forms of power generation. pp. S5208-09
14. FHA, RURAL DEVELOPMENT. Sen. Metcalf submitted the petition of the Legislature of Idaho urging Congress to make additional appropriation for the Farmers Home Administration. pp. S5162-63

15374 embodying the subcommittee's recommendations, a hearing was held on the bill on February 4, 1970. Representatives of the Department of Justice appeared at the hearing and stated that the Department had no objection to changes recommended by the committee and as embodied in the bill.

Section 355 of the Revised Statutes, which would be amended by this bill, is set out in three places in the United States Code—40 U.S.C. 255; 33 U.S.C. 733; and 50 U.S.C. 175—and prohibits the expenditure of funds upon land purchased by the United States for a construction site until the Attorney General has approved the title to that land. As has been noted this bill would continue to place the responsibility for the approval of land titles in the Attorney General and would further authorize the Attorney General to delegate this title approval responsibility to other departments and agencies subject to his general supervision and in accordance with regulations promulgated by him.

The basic provisions of section 355 were enacted in 1841—5 Stat. 469—and have remained in effect since that time. At the time of its original enactment and for a considerable time afterward, title work was a highly specialized legal function. Title opinions were based on abstracts prepared by the examining attorney. These abstracts not only involved a search of the title records but often required many extraneous investigations. The need for searches outside the records subsequently became limited due to the fact that in the first half of the 20th century, the various States improved their title recording requirements and facilities. In the same period, title companies began preparing and certifying abstracts for examining attorneys. More recently and particularly in the past 20 years, certificates of title and title insurance policies have largely displaced abstracts and eliminated much of the need for record searches. In its communication, the Justice Department observed that these developments have gradually changed much title practice so that it now has many of the aspects of administration rather than legal decisionmaking.

This bill provides for a realistic adjustment of Government procedures to meet modern conditions. The Department in the communication to the Congress noted that this improvement in the law will also result in certain economies to the Government. The proposal recognizes the fact that the assembly of title papers, curative work, closings and related title functions are already performed by the agencies. The considered use of the authority to delegate the functions of the Attorney General will have the effect of avoiding duplication which now exists as to some aspects of title processing by the Government. It is recommended that the bill, with the committee amendment, be considered favorably.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GOLD AND SILVER ARTICLES— CONSUMER PROTECTION

The Clerk called the bill (H.R. 8673) to protect consumers by providing a civil remedy for misrepresentation of the quality of articles composed in whole or in part of gold or silver, and for other purposes.

Mr. HALL. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

PRIVATE CALENDAR

The SPEAKER. This is Private Calendar day. The Clerk will call the first individual bill on the Private Calendar.

BARBARA ROGERSON MARMOR

The Clerk called the bill (S. 533) for the relief of Barbara Rogerson Marmor.

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

FRANZ CHARLES FELDMEIER

The Clerk called the bill (S. 614) for the relief of Franz Charles Feldmeier.

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

CORA S. VILLARUEL

The Clerk called the bill (S. 1775) for the relief of Cora S. Villaruel.

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

MICHEL M. GOUTMANN

The Clerk called the bill (S. 1934) for the relief of Michel M. Goutmann.

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

WU HIP

The Clerk called the bill (S. 1963) for the relief of Wu Hip.

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. Is there objection to

the request of the gentleman from Tennessee?

There was no objection.

TO CONFER U.S. CITIZENSHIP POSTHUMOUSLY UPON L. CPL. ANDRE L. KNOPPERT

The Clerk called the bill (S. 2363) to confer U.S. citizenship posthumously upon L. Cpl. Andre L. Knoppert.

There being no objection, the Clerk read the bill as follows:

S. 2363

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Lance Corporal Andre L. Knoppert, a native of the Netherlands, who served honorably in the United States Marine Corps from December 28, 1967, until his death on May 8, 1969, shall be held and considered to have been a citizen of the United States at the time of his death.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

JOSE LUIS CALLEJA-PEREZ

The Clerk called the bill (H.R. 1747) for the relief of Jose Luis Calleja-Perez.

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

GLORIA JARA HAASE

The Clerk called the bill (H.R. 12959) for the relief of Gloria Jara Haase.

Mr. HALL. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

KIMBALL BROS. LUMBER CO.

The Clerk called the bill (H.R. 13740) for the relief of Kimball Bros. Lumber Co.

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

DR. ANTHONY S. MASTRIAN

The Clerk called the bill (H.R. 15760) for the relief of Dr. Anthony S. Mastrian.

Mr. HALL. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

DOCUMENTATION OF THE VESSEL "WEST WIND" WITH FULL COASTWISE PRIVILEGES

The Clerk called the bill (S. 1177) to authorize the documentation of the vessel *West Wind* as a vessel of the United States with coastwise privileges.

Mr. DUNCAN. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The SPEAKER. This concludes the call of the Private Calendar.

PERMISSION FOR SUBCOMMITTEE ON GOVERNMENT PROCUREMENT, SELECT COMMITTEE ON SMALL BUSINESS, TO SIT DURING GENERAL DEBATE TODAY

Mr. CORMAN. Mr. Speaker, I ask unanimous consent that the Subcommittee on Government Procurement of the Select Committee on Small Business may be permitted to sit today during general debate.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

PERMISSION FOR COMMITTEE ON RULES TO FILE PRIVILEGED REPORTS

Mr. COLMER. Mr. Speaker, I ask unanimous consent that the Committee on Rules may have until midnight tonight to file certain privileged reports.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

PERMISSION FOR COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE TO FILE REPORT

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent that the Committee on Interstate and Foreign Commerce may have until midnight tonight to file a report on H.R. 1124.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

JURISDICTION OF U.S. COURTS—NONAPPROPRIATED FUND ACTIVITY

Mr. ROGERS of Colorado. Mr. Speaker, I move to suspend the rules and pass the bill (S. 980) to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes, as amended.

The Clerk read as follows:

S. 980

Be it enacted by the Senate and House of Representatives of the United States of

America in Congress assembled, That (a) section 1346(a) (2) of title 28, United States Code, is amended by adding at the end thereof the following new sentence: "For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States."

(b) The first full paragraph of section 1491 of title 28, United States Code, is amended by adding at the end thereof the following new sentence: "For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States."

(c) Section 1302 of the Supplemental Appropriation Act, 1957 (70 Stat. 694; 31 U.S.C. 724(a)), is amended by adding immediately before the period at the end thereof the following new proviso: "Provided further, That any judgment or compromise settlement against the United States arising out of an express or implied contract entered into by the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration, shall be paid in accordance with this section and sections 2414, 2517, and 2518 of title 28, United States Code, and such instrumentality shall reimburse the United States for a judgment or compromise settlement paid by the United States."

SEC. 2. (a) In addition to granting jurisdiction over suits brought after the date of enactment of this Act, the provisions of this Act shall also apply to claims and civil actions dismissed before or pending on the date of enactment of this Act if the claim or civil action is based upon a transaction, omission, or breach that occurred not more than six years prior to the date of enactment of this Act.

(b) The provisions of subsection (a) of this section shall apply notwithstanding a determination or judgment made prior to the date of enactment of this Act that the United States district courts or the United States Court of Claims did not have jurisdiction to entertain a suit on an express or implied contract with a nonappropriated fund instrumentality of the United States described in section 1 of this Act.

The SPEAKER. Is a second demanded?

Mr. FISH. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

CALL OF THE HOUSE

Mr. HALL. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. ALBERT. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

Adams
Ashley
Ayres
Baring
Beall, Md.
Blackburn
Bolling
Brown, Calif.
Broyhill, N.C.
Cabell
Carey
Casey
Chappell
Clark
Clausen,
Don H.
Clawson, Del
Clay
Conable
Daddario
Dawson
Dent
Dickinson
Diggs

[Roll No. 64]

Evans, Colo.
Feighan
Fulton, Pa.
Gallagher
Goldwater
Gray
Green, Oreg.
Hagan
Halpern
Hanna
Harsha
Hastings
Hébert
Horton
Johnson, Pa.
Kastenmeier
Kirwan
Lennon
Lowenstein
Lujan
Lukens
McCarthy
Miller, Calif.
Mollohan

Moorhead
Morton
Murphy, N.Y.
O'Hara
Ottinger
Philbin
Pollock
Powell
Reuss
Roe
Rostenkowski
St Germain
St. Onge
Scheuer
Schneebeli
Taft
Teague, Calif.
Tunney
Vander Jagt
Waldte
Whalley
White
Wiggins
Wilson, Bob

The SPEAKER. On this rollcall 359 Members have answered to their names, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

JURISDICTION OF U.S. COURTS—NONAPPROPRIATED FUND ACTIVITY

PARLIAMENTARY INQUIRY

Mr. HALL. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. HALL. Mr. Speaker, having been on my feet at the time the bill was asked to be considered under suspension of the rules, and the quorum call having intervened, may I inquire of the Speaker if the gentleman who demanded the second was awarded the same and if he is opposed to the bill.

The SPEAKER. The Chair will state that the gentleman from New York demanded a second and the Chair put the unanimous-consent request, "without objection, a second will be considered as ordered," and the Chair did hesitate and pause before stating that a second would be considered as ordered. Under the circumstances, the Chair feels that the gentleman from New York demanded a second in proper order.

Mr. HALL. And a second has been ordered?

The SPEAKER. Exactly.

Mr. HALL. I thank the Chair.

The SPEAKER. The gentleman from Colorado (Mr. ROGERS) is recognized.

Mr. ROGERS of Colorado. Mr. Speaker, I urge the House to give favorable consideration to S. 980, as amended by the Committee on the Judiciary.

The enactment of this measure will remove a number of inequities that have arisen as the result of a loophole in the Tucker Act.

Under the Tucker Act, the United States has waived its sovereign immunity with respect to contract claims. However, the construction given to the Tucker Act by the courts has left a loophole, which creates inequities for some claimants. This loophole exists with respect to contracts entered into by those Federal instrumentalities which operate as non-

appropriated fund activities. In short, under present construction of the Tucker Act, a plaintiff with a legitimate claim against a nonappropriated fund activity is not entitled to any judicial relief. S. 980 as reported by the Committee on the Judiciary is intended to close this loophole with respect to contracts entered into by post-exchange types of operations conducted within the Department of Defense and the National Aeronautics and Space Administration.

In urging favorable consideration of this measure, let me emphasize that the bill as reported by the House Judiciary Committee differs significantly from the Senate version. Under the bill as passed by the Senate, the United States would waive its sovereign immunity with respect to contracts of all nonappropriated fund activities. Under the Senate version, any judgments against the United States would be paid by the Comptroller General and the nonappropriated fund activity would be required to reimburse the United States. However, the United States would be reimbursed only to the extent that reimbursement would not jeopardize the operation of the nonappropriated fund activity. As a result, under the Senate version, the taxpayers would be called upon to bear the financial burden in some cases.

Under the bill as reported by the House Judiciary Committee, there would be no cost to the taxpayers. Since our version of the bill applies only to post-exchange types of operations—all of which have sufficient assets to pay their own way—we would not be drawing on tax funds.

Mr. Speaker, I believe that the amendments added to the Senate version by the House Judiciary Committee should eliminate any basic controversy concerning this measure. In the form that the bill was reported by us, it will remove a basic inequity. At the same time, it will create no additional tax burdens. Under these circumstances, I once again urge that it be given the approval of this House.

Mr. RIVERS. Mr. Speaker, will the gentleman yield?

Mr. ROGERS of Colorado. I yield to the gentleman from South Carolina.

Mr. RIVERS. I just want to be sure that this would not give away the jurisdiction that the military has by reason of the cession of State land for its activities, because any time a military installation is in operation, the land is ceded to the Government and the Government has exclusive jurisdiction.

Now, in this case does it give the sovereignty in which the military installation is located the authority and the right to serve State papers on nonappropriated fund activities, purely based upon a contract?

Mr. ROGERS of Colorado. All this does is to give jurisdiction to the Federal court to entertain suits based on contracts against these exchanges.

Mr. RIVERS. Mr. Speaker, if the gentleman will yield further, the jurisdiction is exclusively in the Federal courts?

Mr. ROGERS of Colorado. Well, under present law you cannot sue these exchanges in either State or Federal courts. All this bill does is give jurisdiction—

Mr. RIVERS. To go into the Federal courts?

Mr. ROGERS of Colorado. To go into the Federal courts; that is correct.

Mr. RIVERS. Do you provide for punitive damages?

Mr. ROGERS of Colorado. Whatever may be authorized under the contract in the particular case would be used. All this does is give jurisdiction. Heretofore you could not even sue for any contract claim.

Mr. RIVERS. Mr. Speaker, based upon the explanation of the gentleman from Colorado, I can see no objection to the bill.

Mr. HALL. Mr. Speaker, will the gentleman yield?

Mr. ROGERS of Colorado. I yield to the gentleman from Missouri.

Mr. HALL. Mr. Speaker, I appreciate the gentleman's statement and I want him to know that I read thoroughly the report of your committee. However, I would like to be assured by the gentleman and by the committee that if we go to conference on the amendments by the House Committee on the Judiciary which in its wisdom saw fit to apply, and which sets them forth so clearly in the second, third, fourth and fifth paragraphs on page 3 of the report, that is, the differences between the Senate-passed version and what you believe to be right; that we will stick to our guns in conference and insist upon the House version and amendments, because in my opinion they are most important.

They certainly are well taken, in the opinion of a nonlawyer, but as one who knows the commissaries and post exchanges of the military services. Can the gentleman give us such assurance?

Mr. ROGERS of Colorado. May I say to the gentleman from Missouri that I personally was never in favor of opening the floodgates, so to speak, to make the U.S. Government responsible for every officer's club and every other nonappropriated fund activity that would be covered by the Senate's version of the bill. In trying to resolve the problem, we spelled out, as the amendments will show, that we only intend the bill to apply to the Army and Air Force exchange services, Navy exchanges, the Marine Corps exchanges, the Coast Guard exchanges, and the exchange councils of the National Aeronautics and Space Administration. It was our view that all of that group are solvent and that such action should only be instituted against that group and no other. As far as I am personally concerned I will stick by that if we have to go to conference. However, I am hopeful that the Senate will accept our amendments and not make a conference necessary.

Mr. HALL. I appreciate the pledge given by the gentleman, Mr. Speaker, and I would like to ask the gentleman further wherein there is justice and equity in singling out only those that are able to pay their own way? Insofar as principle is involved it seems applicable only to those who have managed properly and have built up their company fund, or their central exchange fund, so to speak, would be relieved of sovereign immunity, whereas others who have been less well managed should be protected.

Mr. ROGERS of Colorado. May I say to the gentleman first of all that it is extremely difficult to find out where all these activities are that are covered by the broad Senate bill. We limited the coverage of the bill so that if any judgment was taken it would be taken against a solvent activity and would not cost the taxpayers anything. As I indicated we cannot afford to open up liability unless the money is to be paid by the people who are engaged in the business.

Mr. HALL. This brings up the very basic question of why open it up and remove sovereign immunity in the first place, if we are going to do it in a fractional manner.

Mr. ROGERS of Colorado. The reason for it is that we do not think that the exchanges which do the major portion of all this business should be immune from suit. They should at least be required to come into court and be responsible like any other function or business concern with respect to the contracts that they enter into.

Mr. HALL. Mr. Speaker, if the gentleman will yield for a final pair of questions, I would say, No. 1, will this be passed on to the military, and their dependents as the consumers from the post exchanges, commissaries, and so forth; and, second, by removing this sovereign immunity and allowing it to go to court, will the various States of the Union be allowed to impose taxes on such post exchanges and commissaries?

Mr. ROGERS of Colorado. First of all, I do not believe it will be passed on to any of the members of the military and their dependents. Second, the question of taxation by the local governments is not involved in this particular bill, nor does the fact that the exchanges are subject to suit make them subject to State taxation.

Mr. HALL. Can the gentleman say categorically that there will be no taxes by the various States of the Union against the Federal posts, camps or stations, and their post exchanges, commissaries, and so forth, as the result of this bill?

Mr. ROGERS of Colorado. Let me assure the gentleman that this bill does not change that situation in any manner whatsoever.

Mr. HALL. Mr. Speaker, I thank the gentleman for yielding.

Mr. FISH. Mr. Speaker, I rise in support of S. 980. This bill, as amended by the Judiciary Committee, should command widespread, if not unanimous support because, first, it helps correct a gross inequity in the law, second, there is no known opposition to the bill, and, third, it will not cost the taxpayers a single penny.

S. 980 deals with the concept of sovereign immunity. This longstanding rule of law derives from the old and hoary principle that the king, or sovereign, was not subject to the very laws he promulgated for his subjects. Specifically, the doctrine of sovereign immunity holds that a sovereign government may not be sued, whether in tort or in contract, by any of its citizens.

While a doctrine which holds that the government is above the law would seem out of place in the American democracy,

the demise of this rule has come relatively recently in the history of the United States. Under the Federal Tort Claims Act of 1946, the United States was made liable for the torts of its agents and employees to the same extent a private person would be liable in like circumstances. This act has been judicially construed to cover nonappropriated fund activities as well as activities conducted with appropriated funds.

The Tucker Act, enacted in 1887, removes the protection of sovereign immunity from the United States for suits in contract. Although nonappropriated fund activities have been held to be instrumentalities of the United States and thus protected by sovereign immunity from suits in contract, the courts have held that they do not come within the ambit of the Tucker Act since the contract obligations are not paid out of appropriated funds.

S. 980, as it passed the other body, would close this loophole in the Tucker Act by permitting the aggrieved party to sue the U.S. Government where the gravamen of the complaint arises from a contract with a nonappropriated fund activity. Such activity would then have to reimburse the United States for any judgment paid.

To date three sets of hearings have been held on S. 980 and its predecessor in the 90th Congress, S. 3163. Of the numerous witnesses who appeared, all were unanimous in their support of this legislation. The witnesses included representatives of the American Bar Association, the Department of Defense, the judiciary, the law school faculties, and the practicing bar.

There is one change of substance which our committee made in S. 980 as enacted by the other body. We made S. 980 applicable only to the post exchanges of the military services and NASA, rather than to all nonappropriated fund activities. Since we know that these particular post exchange activities have very substantial assets capable of providing full reimbursement for any judgments paid by the United States, we can be assured that the program, if limited to them, will operate on a pay-as-you-go basis without cost to the taxpayers.

The committee amendment limits applicability of the waiver of sovereign immunity in contract claims to post exchanges. This is appropriate because we can be assured that these activities are capable of reimbursement to the United States.

In the version passed by the other body, the Congress is placed in the position of possibly appropriating funds to pay off liability incurred by activities for whose operations no Federal funds were appropriated.

In short, Mr. Speaker, the Judiciary Committee feels that an aggrieved party should have a right of action against the Government for damages arising out of contract disputes with post exchanges. This right, we are assured, can be granted without placing any additional burden on the taxpayer.

I, therefore, urge the passage of S. 980 as it is now before the House.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. FISH. I yield to the gentleman from Iowa.

Mr. GROSS. I would like, if the gentleman would bear with me, to read two short sentences from the report that gives me concern. The sentences read:

Nonappropriated fund activities are at present an anomaly of the law. When States have attempted to tax or regulate their activities these activities have successfully argued that they are immune from taxation and regulation as instrumentalities of the United States.

My question is, does this change the status of their present, or what appears to be, exemption from the law as to the payment of taxes to States and local subdivisions of the States?

Mr. FISH. This is a question that was put by the gentleman from Missouri to the chairman of the subcommittee during the course of this debate in which the response was that this bill would not change their tax status in any way. What we are accomplishing by this measure is giving jurisdiction to the Federal courts over suits in contract brought against these particular instrumentalities. As we understand it, S.980 would not extend State taxation jurisdiction over these same instrumentalities.

Mr. GROSS. So the gentleman makes the categorical reply that this bill does not change the status of the present law in that respect?

Mr. FISH. That is my understanding.

Mr. GROSS. Will the gentleman further comment on the fact that all agency reports contained in this report are apparently adverse to the bill? Perhaps their opposition has been corrected or taken care of by way of amendment, but the fact remains that the report shows that all the agencies, or practically everyone that has commented, has been opposed to the bill.

Mr. FISH. In response to the question of the gentleman from Iowa, I would say that, although some of these agency reports suggested certain amendments to the bill, all of them supported the purpose and the principal thrust of the proposed legislation. As the gentleman suggests some of the amendments were adopted by the committee.

Mr. PIRNIE. Mr. Speaker, will the gentleman yield?

Mr. FISH. I yield to the gentleman from New York.

Mr. PIRNIE. In support of the comment made by the gentleman from Iowa, it seems as though that sentence was put into the report for a purpose, and the explanation that we have received here is adequate. I do not believe there is an intention to create any tax liability on these agencies.

Mr. FISH. That is perfectly correct. The gentleman is absolutely right. This bill waives sovereign immunity of post exchanges in contract suits only. It is not intended to confer jurisdiction to States for tax purposes.

Mr. PIRNIE. Why is tax liability referred to in the report?

Mr. ROGERS of Colorado. Mr. Speaker, will the gentleman yield?

Mr. FISH. I yield to the gentleman from Colorado.

Mr. ROGERS of Colorado. The one reason there is reference to it in the report is only to show that they are Federal instrumentalities. The gentleman from Iowa read that portion of the report. We used that language to show they are Federal instrumentalities, and as we pointed out in the previous paragraphs, they are not subject to suit. That is the reason.

Mr. GROSS. Mr. Speaker, will the gentleman yield further?

Mr. FISH. I yield to the gentleman from Iowa.

Mr. GROSS. It is said they are instrumentalities of the Federal Government, without referring to the tax situation as it presently exists. That is what concerns some of us.

Mr. ROGERS of Colorado. May I again assure the gentleman from Iowa and other Members that the passage of this bill will not in any manner do anything other than confer jurisdiction upon a Federal court to decide a dispute that may exist between a litigant or a contractor with the exchange services. That is all it does.

Mr. ROGERS of Colorado. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore (Mr. ALBERT). The question is on the motion of the gentleman from Colorado that the House suspend the rules and pass the bill S. 980, as amended.

The question was taken and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

DONATION OF DAIRY PRODUCTS

Mr. FOLEY. Mr. Speaker, I move to suspend the rules and pass the bill (S. 2595), to amend the Agricultural Act of 1949 with regard to the use of dairy products, and for other purposes.

The Clerk read as follows:

S. 2595

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 416 of the Agricultural Act of 1949, as amended (U.S.C. 1431), is amended by adding at the end thereof the following:

"Dairy products acquired by the Commodity Credit Corporation through price support operations may, insofar as they can be used in the United States in nonprofit school lunch and other nonprofit child feeding programs, in the assistance of needy persons, and in charitable institutions, including hospitals, to the extent that needy persons are served, be donated for any such use prior to any other use or disposition."

The SPEAKER pro tempore. Is a second demanded?

Mrs. MAY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

DIGEST of Congressional Proceedings

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(FOR INFORMATION ONLY;
NOT TO BE QUOTED OR CITED)

For actions of July 14, 1970
91st-2nd; No. 118

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HIGHLIGHTS: House subcommittee approved 7 watershed projects. Rep. de la Garza commended bilingual soil conservation plan. Sen. Hatfield discussed \$20,000 farm payment limitation.

HOUSE

1. WATERSHED PROJECTS. An Agriculture Committee approved the following seven watershed projects for full committee action: Grand Prairie (Oregon); Mount Hope (Kansas); Spring Brook (Wisconsin); Simon Run (Iowa); Moorhead Bayou (Mississippi); Starkweather (North Dakota); and Upper Bay River (North Carolina). p. D760
2. COMMITTEE ACTION. The Government Operations Committee voted to report (but did not actually report) the following bills:
H. R. 18275, providing for the disposal of surplus Federal property for park and recreational uses;

July 19, 1970

S. 2763, allowing for the purchase of additional systems and equipment for passenger motor vehicles over and above the statutory price limitation. p. D760

The Public Works Committee approved several flood control survey resolutions. p. D760-1

3. FOREIGN TRADE. Rep. Saylor urged support of the various "import control" bills "to preserve the jobs and livelihoods of the families represented by our import-damaged industries." pp. H6712-4
4. FOREIGN CURRENCIES. Both Houses received a report from Export Marketing Service on agreements signed for foreign currencies under P. L. 480 during May and June, 1970; to the Committee on Agriculture. p. H6714 and S. 11200

SENATE

5. FAMILY PLANNING; NATIONAL PARKS. Took from the calendar and passed the following:
With committee amendments; S. 2108, to improve family planning and population research, and
S. 2985, to improve national park administration, pp. S11175-87;
S. 11188-89
Without amendments; H. R. 12758, to authorize volunteers in the park program. pp. S11187-88
6. FARM SUPPORTS; ASCS. Sen. Hatfield reviewed his reasons for supporting the support payment limitation, stating that only 91 Oregon farmers will be affected by the new limitation, as reflected in a table placed in the Record. p. S11245
7. ENVIRONMENT. Sen. McIntyre discussed the need for a strong commitment by the academic community to environmental control studies and praised a university article, "Hard Political Truths About Environmental Reform", submitted for the Record. pp. S11217-19
8. POLLUTION. Sen. Percy cited private initiative in the anti-pollution campaign, inserting reports of banks that make discount loans for anti-pollution purposes, and an insurance company statement on the non-insurability of companies which knowingly pollute.
9. NATIONAL SEASHORE; ENDANGERED SPECIES. Sen. Yarborough spoke of his efforts in the establishment of Padre Island National Seashore and of the necessity to act further to protect endangered species, submitting matter for the Record on both subjects. pp. S11209-10; S11242-44
10. SEEDS; GREEN REVOLUTION. Sen. Kennedy discussed a news report on the effect of the special high yield seeds introduced recently into India and placed the report in the Record. pp. S11262-64
11. CLAIMS. Agreed to House Amendment. p. S11272

mission that the Commission shall advise the individual of the alleged defamatory statement and give him the opportunity to present his case in the hearing record.

So my suggestion to the Senate would be that, while it may be desirable that all agencies of the Federal Government, and perhaps all committees of the Congress, consider the inclusion of the statement of a person alleged to have been defamed in its report, we not at this time, and without hearings, extend further the already substantial obligation that we have imposed on the Civil Rights Commission to give an allegedly defamed person an opportunity to be heard.

We have already said to the commission that certain safeguards shall be extended. Those safeguards go beyond the directive we have given, as far as I am aware, to any other agency or any other commission.

The Supreme Court, in two cases, has said that the commission was similar to other agencies and commissions.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HART. I yield myself 2 additional minutes.

In one sense the court was not correct, because, unlike the other agencies and commissions, the Civil Rights Commission is required to extend an opportunity to an allegedly defamed individual far beyond the requirements respecting any other commission, or at least any of which I am aware. If I am wrong, I shall be glad to be corrected.

I would suggest that, under existing practice, the obligations and burdens imposed on the Civil Rights Commission, extending as it does a degree of protection to an individual greater than we have provided as to any other agency or commission, now is adequate to safeguard the rights the Senator from Arkansas is concerned about. If it is thought prudent, that the printing of an individual statement be contained in the report, as distinguished from the transcript record of commission and agency hearings, then let us do it across the board.

I would suggest that we ought to do that only after a careful hearing, to see whether it is indeed a constructive, worthwhile, and prudent course of action. For this reason, Mr. President, I would suggest that the amendment not be agreed to, taking the position that the commission which it affects already carries a heavier burden and a clearer responsibility to protect the rights of an individual than any other commission or agency that we have ever established.

I reserve the remainder of the time.

The PRESIDING OFFICER. Who yields time?

Mr. McCLELLAN. Mr. President, I yield myself 3 minutes.

My colleague speaks of the legislative process and notes that these hearings are out in public. They go out all over the country and hold them.

This is not just my complaint.

Let me read from a reaction of one member of a minority group.

I ask unanimous consent to have printed in the RECORD at this point the remarks of Representative GONZALEZ on

May 26, which appear at page H4807 of the CONGRESSIONAL RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

QUESTIONS FOR THE COMMISSION ON CIVIL RIGHTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. GONZALEZ) is recognized for 10 minutes.

Mr. GONZALEZ. Mr. Speaker, it is the duty and the obligation of Government to inform itself of injustice, and to seek ways and means of redressing just grievances. Because it is a fact that large numbers of our citizens are denied full and free access to the liberties most citizens take for granted, simply because these luckless ones are poor or ignorant or members of some ethnic minority, this Congress established the U.S. Commission on Civil Rights to investigate these grievances and assist in resolving them.

But the high expectations that I had for the Commission on Civil Rights reached a sad decline when I observed the operation of the Commission at close range. I do not know if the performance of the Commission in its San Antonio hearings in December 1968 is typical of that body's operations. I hope not, because if that performance is typical, the value of the whole operation is very much open to question.

I remember that the Committee on Un-American Activities used to be pilloried because it paid witnesses. But the same can be said of the Commission on Civil Rights, and I do not believe that if there is guilt on the one hand the same facts would lead to a conclusion of innocence on the other.

It is a fact that the Commission on Civil Rights hired a number of experts and consultants to help it prepare for its San Antonio hearings. A number of those same people who helped set up the hearings later appeared as witnesses before that hearing, but the Commission never identified these people as employees or former employees of the Commission. The hearings also heard from paid expert witnesses, who were paid consulting fees for their work in testifying, but these were not identified as paid witnesses at the hearing.

Mr. Speaker, there is a difference between a person who testifies out of his own motivation and a person who is paid to prepare testimony. There is a difference between being an employee one week and a witness the next. That difference is the same difference between an honest deal and a stacked deck.

I do not believe that the Commission on Civil Rights has any more right to stack the deck at its hearings, by direction or by indirection, than does any other agency of this Government.

I will make available to the House full details of this matter at a later date. For the moment, however, I ask you to read the account of this odd Commission practice as it appeared in the San Antonio Express and News last Saturday.

I stated at the time of the hearings that the Commission on Civil Rights had stacked the hearings, and that its report could have been written without having gone to the trouble of conducting hearings. I did not know at the time how right I was.

[From the San Antonio (Tex.) Express and News, May 23, 1970]

"WITNESSES WERE PAID

("By Kemper Diehl)

"A group of key witnesses who appeared at the U.S. Commission on Civil Rights hearings in San Antonio on Dec. 9-14, 1968, performed extensive services for the commission prior to the hearings for which they were

paid amounts ranging from \$50 to \$75 a day, U.S. Rep. Henry B. Gonzalez disclosed Friday.

"Among those who received substantial payments for services were Rev. Ralph H. Ruiz, who gained nationwide headlines with an attack on FBI agents in his testimony, and Rev. Ed Krueger, formerly in the Valley Ministry of the Texas Council of Churches, who charged Texas Rangers with brutal treatment of striking farm workers there.

"Ruiz was paid \$525 for seven days work, according to a commission report, and Krueger received \$350 for a similar number of days.

"Largest sum paid to a South Texas witness for services prior to the hearings went to Mike V. Gonzales, Del Rio attorney, who criticized the administration of justice in cases involving Mexican-Americans. He received \$1,575 for 21 days work.

"Others receiving fees as consultants or experts included Erasmo Andrade, recently defeated in a Democratic primary race against State Sen. Wayne Connally. He was paid \$350 for seven days work.

"Andrade was not a witness.

"Raul Valdez, director of the Guadalupe Community Center, was paid \$250 for five days work, but was not a witness. He was reported by the commission to have provided the commission with contacts with young people in San Antonio.

"A more recent recipient of Civil Rights Commission funds was Edward L. Holmes, recently defeated in a Democratic primary race for the legislature. He was paid \$625 for 12½ days work during the 1970 fiscal year.

"Rep. Gonzalez took note of the explanation by the U.S. Commission on Civil Rights that it is not permitted under the law to 'utilize the resources of voluntary of uncompensated personnel...'

"But he took issue with the failure of the Commission to identify witnesses who had been employed prior to the hearing.

"This bears out what I said at the time," declared Gonzales, who had been critical of the selection of witnesses by commission staffers. I knew it was a hand-picked and pre-directed affair."

"Gonzales noted that the commission had engaged two witnesses in the role of paid, expert witnesses. These were Jack Forbes, Berkeley, Calif., who described Mexican-Americans as a 'conquered' population, and Alex Mercure of Albuquerque, N.M. The congressman observed:

"There is, of course, nothing wrong with hiring consultants and expert witnesses. But it seems a startling oversight that these persons were not identified as paid experts at the hearings."

"Gonzales released a report by the commission which described duties performed by various consultants in fiscal 1969.

"Of Ruiz, it related:

"Assisted in the preparation of the San Antonio hearing. Through his work as a priest in the Mexican-American area of San Antonio, he provided commission staff members with many contacts with potential witnesses."

"Krueger was described as having assisted in preparations for the hearings. The report related: 'His intimate knowledge and widespread connections in the Lower Rio Grande Valley were helpful to commission attorneys in their investigations and interviews of appropriate witnesses.'

"Mike Gonzales was said to have helped in hearing preparations with 'a great deal of information and a number of contacts knowledgeable in the areas of education and the administration of justice.'

"Of Andrade's services, the commission reported:

"Provided consultant services to the Office of General Counsel in connection with preparation for the San Antonio hearings."

Through his familiarity with many community groups in San Antonio he introduced commission attorneys to persons knowledgeable with respect to hearing issues."

"Edwin Gaida of San Antonio was listed as receiving \$1,275 for 17 days of work as a photographer for the commission. Several other San Antonians were listed as working either in Fiscal 1969 or Fiscal 1970 as consultants, but their duties were not described. These included Peter F. Nabekov, four days for \$240; Edwin J. Stanfield, 10 days for \$500; Jose V. Uriegas, seven days for \$350; and Richard J. Bela, 49 days in Fiscal '70, for \$3,675."

Mr. McCLELLAN. Mr. President, this is what he says about the Commission hearings in San Antonio—his home town—in relation to the Mexican minority groups:

Mr. Speaker, it is the duty and the obligation of Government to inform itself of injustice.

And so forth. Then he goes on:

But the high expectations that I had for the Commission on Civil Rights reached a sad decline when I observed the operation of the Commission at close range. I do not know if the performance of the Commission in its San Antonio hearings in December 1968 is typical of that body's operations.

Mr. President, I interject that this is the hearing in which they were investigating the treatment of Mexican-Americans by the police in that section of the country, and here is what one Mexican American leader says about it. He does not know if it is typical of that body's operations, but he says:

I hope not, because if that performance is typical, the value of the whole operation is very much open to question.

I remember that the Committee on Un-American Activities used to be pilloried because it paid witnesses. But the same can be said of the Commission on Civil Rights, and I do not believe that if there is guilt on the one hand the same facts would lead to a conclusion of innocence on the other.

It is a fact that the Commission on Civil Rights hired a number of experts and consultants to help it prepare for its San Antonio hearings. A number of those same people who helped set up the hearings later appeared as witnesses before that hearing, but the Commission never identified these people as employees or former employees of the Commission. The hearings also heard from paid expert witnesses, who were paid consulting fees for their work in testifying, but these were not identified as paid witnesses at the hearing.

Mr. Speaker, there is a difference between a person who testifies out of his own motivation and a person who is paid to prepare testimony.

He further said:

I do not believe that the Commission on Civil Rights has any more right to stack the deck at its hearings, by direction or by indirection, than does any other agency of this Government.

Mr. President, I am simply asking that if they publish a report degrading and defaming someone, the Civil Rights Commission, who ought to set the example on the observance of civil rights and the observance of due process, should be willing—and we should require it—to give the man who is being charged the right to have his statement published as a part of the report itself.

In this instance these police officers were charged, in effect, with a crime. The

grand jury had refused to indict them. But the commission published these reports defaming their character, and holding them up to public ridicule, without making public the defense of the persons accused.

I say that if we are going to have a civil rights commission in this country, supported by law, established and sustained by law, that commission ought to set the highest example of observance of civil rights and due process, and Congress should require no less a standard of them.

The PRESIDING OFFICER. Who yields time?

Mr. McCLELLAN. Mr. President, I am about to suggest the absence of a quorum, without it being taken out of anyone's time. I want to make a brief statement before the vote. Then I will ask for a rollcall vote.

If I may make this observation, one side of this body is off in a conference. It is the time for the minority Members of this body to have their weekly conference, and they are not present.

I suggest the absence of a quorum, they should have the opportunity to be here with the time not to be taken out of either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. TYDINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. McIntyre). Without objection, it is so ordered.

JURISDICTION OVER CERTAIN CONTRACT CLAIMS BY U.S. COURTS

Mr. TYDINGS. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 980.

The PRESIDING OFFICER (Mr. CASE) laid before the Senate the amendments of the House of Representatives to the bill (S. 980) to provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes, which were, on page 1, line 6, strike out all after "with" down to and including "States" in line 8, and insert "the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration."

On page 2, line 3, strike out all after "with" down to and including "States" in line 5, and insert "the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration."

Mr. TYDINGS. Mr. President, S. 980 was passed by the Senate on June 30, 1969. When enacted it will remove a loophole from the Tucker Act, which provides for the waving of the sovereign immunity of the United States with respect to con-

tract claims. Under the Tucker Act, the United States is liable in the Court of Claims of the United States and in appropriate cases in the district courts of the United States, to suit "upon any express or implied contract with the United States" 28 U.S.C. 1491; 28 U.S.C. 1346 (a)2. The courts have repeatedly held, however, that the Federal Government liability to suit under these sessions only exists with respect to contract obligations to be paid out of appropriate funds.

The injustice and inequity worked by this Tucker Act loophole have been recognized often. Indeed, a judge in the Court of Claims has declared "this is a matter which strongly needs congressional correction."

Under the provisions of S. 980 as passed by the Senate, the sovereign immunity of the United States would be completely removed with respect to all nonappropriated fund activities. Judgments against the United States would be paid by the Comptroller General of the United States and the nonappropriated fund activity would be required to reimburse the United States only "to the extent that the Comptroller General of the United States determines that a reimbursement may be made without unduly jeopardizing the operation of such activity."

As amended by the House of Representatives, S. 980 would provide for the waiver of the sovereign immunity of the United States only with respect to post-exchange type of operations which are conducted within the Defense Department and the National Aeronautics Space Administration. Moreover, the House version of the bill would require the exchanges to reimburse the United States in the event of any judgment incurred by them which is paid by the United States.

The amendments added by the House of Representatives do not diminish the value of S. 980 in any appreciable degree.

Mr. President, I have cleared the amendments with the distinguished ranking member of the Committee on the Judiciary, the Senator from Nebraska (Mr. HRUSKA), who held the hearings with me in 1969.

I move that the Senate concur in the amendments of the House to the Senate bill.

The motion was agreed to.

CIVIL RIGHTS COMMISSION APPROPRIATIONS AUTHORIZATION

The Senate resumed the consideration of the bill (S. 2455) to authorize appropriations for the Civil Rights Commission, and for other purposes.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, with the time not to be taken out of either side.

The PRESIDING OFFICER (Mr. CASE). Without objection, it is so ordered, and the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.



Public Law 91-350
91st Congress, S. 980
July 23, 1970

An Act

84 STAT. 449

To provide courts of the United States with jurisdiction over contract claims against nonappropriated fund activities of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1346(a)(2) of title 28, United States Code, is amended by adding at the end thereof the following new sentence: "For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States."

U.S. Courts.
Contract claims,
jurisdiction.
62 Stat. 933.

(b) The first full paragraph of section 1491 of title 28, United States Code, is amended by adding at the end thereof the following new sentence: "For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States."

68 Stat. 1241.

(c) Section 1302 of the Supplemental Appropriation Act, 1957 (70 Stat. 694; 31 U.S.C. 724(a)), is amended by adding immediately before the period at the end thereof the following new proviso: "*Provided further*, That any judgment or compromise settlement against the United States arising out of an express or implied contract entered into by the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration, shall be paid in accordance with this section and sections 2414, 2517, and 2518 of title 28, United States Code, and such instrumentality shall reimburse the United States for a judgment or compromise settlement paid by the United States."

31 USC 724a.

SEC. 2. (a) In addition to granting jurisdiction over suits brought after the date of enactment of this Act, the provisions of this Act shall also apply to claims and civil actions dismissed before or pending on the date of enactment of this Act if the claim or civil action is based upon a transaction, omission, or breach that occurred not more than six years prior to the date of enactment of this Act.

75 Stat. 415;
62 Stat. 979.

Retroactive
applicability.

(b) The provisions of subsection (a) of this section shall apply notwithstanding a determination or judgment made prior to the date of enactment of this Act that the United States district courts or the United States Court of Claims did not have jurisdiction to entertain a suit on an express or implied contract with a nonappropriated fund instrumentality of the United States described in section 1 of this Act.

Approved July 23, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 91-933 (Comm. on the Judiciary).

SENATE REPORT No. 91-268 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 115 (1969): June 30, considered and passed Senate.

Vol. 116 (1970): Apr. 7, considered and passed House, amended.
July 14, Senate agreed to House amendments.